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SEPTEMBER 1980

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Robert Bearce

AGAINST ALL ENEMIES

Part I

THE elected and appointed officials of our federal government take an oath of office before undertaking their constitutional duties. Let's take a look at that oath, expressed as a question and answered by "I do."

Do you solemnly swear that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion; and that you will well and faithfully discharge the duties of the office on which you are about to enter: So help you God?

In response to their oath of office, our Congressmen and Senators answer "I do," but do they really mean it?

Unfortunately for the cause of freedom, the oath of office has often become only a hollow formality. Too many members of the administrative, legislative, and judicial branches of the federal government have failed to "support and defend the Constitution of the United States" and "bear true faith and allegiance to the same."

The Constitution has been misinterpreted, abused, and subverted. As it continues to be violated, we should see how freedom is gradually being destroyed.

The word "destroyed" might appear to be somewhat harsh, but it is appropriate. We ought to heed a warning made by Patrick Henry in

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In this three-part series, Robert Bearce of Houston, Texas identifies the basic principles of limited government as set forth in the Constitution of the United States. He shows how we have forsaken many of the basics, and points the way toward a restoration of freedom.

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1775, not long before the opening shots of the War for Independence were fired at Lexington and Concord. Henry clearly understood how freedom was being threatened by oppressive government rule. He warned against indifference, complacency, and apathy.

"It is natural to man to indulge in the illusions of hope. We are apt to shut our eyes against a painful truth, and listen to the song of that siren, till she transforms us into beasts. Is this the part of wise men, engaged in a great and arduous struggle for liberty? Are we disposed to be of the number of those who, having eyes, see not, and having ears, hear not, the things which so nearly concern their temporal salvation? For my part, whatever anguish of spirit it may cost, I am willing to know the whole truth; to know the worst and provide for it."

By "temporal salvation," Patrick Henry meant the preservation of freedom—the freedom to work and provide for our personal lives as we best see fit. Henry and other patriots believed that freedom meant individuals had the ability and responsibility to plan their own lives without unnecessary government intervention. That freedom was being threatened, and Henry was telling the colonists to wake up and confront the danger before them. His admonition applies to us today.

If we truly want to strengthen freedom and regain what we have already lost, we will pledge ourselves to defending the Constitution. We cannot support our Constitution, however, unless we face the fact that it is being continually ignored and betrayed. It is time that we give some serious thought to the Constitution.

Protection from Enemies—Foreign and Domestic

The Founding Fathers who framed our Constitution in 1787 knew that individuals have certain unalienable rights—"life, liberty, and the pursuit of happiness," as earlier expressed in the Declaration of Independence. These rights were God-given rights. No government or constitution gave them to the individual. Rather, the purpose of governments and constitutions was to protect these basic, God-given rights.

The Founding Fathers comprehended how and why people behave the way they do. Men like James Madison and Alexander Hamilton understood human nature. They saw that some human beings would always resort to force, deceit, war, stealing, and killing to get what they wanted. Thus, there was an obvious need for government—legitimate, just government to carry out two main functions:

(1) protecting free people from foreign enemies and invaders;

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(2) protecting honest, self-responsible, hard-working citizens within the nation from domestic lawbreakers who would use coercion, fraud, or force to deprive others of "life, liberty, and the pursuit of happiness."

Good government would do the above, and the Founding Fathers outlined that kind of government in our Constitution. Just as they gave the government certain authority, they also placed limitations on government power. The framers of the Constitution realized that while government was needed to protect individual freedom, government itself had to be placed within limited, strictly defined boundaries. If government was not restrained, it would destroy individual liberty and lead to tyranny. Government had to be controlled. James Madison explained the matter:

"It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed, and in the next place oblige it to control itself."

When Madison wrote that government should "control the governed," he was thinking about necessary government laws required to maintain impartial law and order—law and order that protected individual liberty. This issue of defending individual rights and limiting the power of government is the central theme of the Constitution.

Preserving Personal Liberty

Four aspects of the Constitution show the Founding Fathers' concern for preserving personal liberty within the boundaries of limited government.

First, we have a *written* constitution. Having the powers of government and the rights of the citizenry spelled out in print is no assurance that freedom will be observed, but a written constitution does act as a safeguard to liberty. When the Constitution is snubbed or disregarded, we can at least hold up a warning hand and say something to the effect: "Stop, government bureaucrats! The law you have just passed is unconstitutional. The Fifth Amendment says . . ."

Second, our Constitution provides for a republic. That is, we have a republican form of government based upon the citizenry electing representatives to carry out the

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functions of government. The Founding Fathers did not frame a constitution that would set up a democracy—a kind of government where political power lay directly in the hands of the people. Under a pure democracy, the citizens of the state would exercise popular vote to decide what laws should be made. The majority view would be registered and then carried out by the administrative hand of the central government. There would be no representation (legislative branch of government) between the citizenry and the administrative branch of government.

A democracy might appear to be more "democratic" than a republic, but the authors of the Constitution knew that a democracy would lead to a loss of individual freedom . . . followed by anarchy or tyranny. While the Constitution was being considered for ratification by the Massachusetts Convention, Moses Ames observed:

"It has been said that a pure democracy is the best government for a small people who assemble in person. . . . It may be of some use in this argument . . . to consider, that it would be very burdensome, subject to faction and violence; decisions would often be made by surprise, in the precipitancy of passion, by men who either understand nothing or care nothing about the subject; or by interested men, or those who vote for their own indemnity. It would be a government not by laws, but by men."

The Dangers of Democracy

Seeing the dangers of a democracy, the Founding Fathers adopted a republican form of government. It is true that the history of our nation shows that a republic can suffer the very weaknesses of a democracy that Ames described, but the fact remains that a republic comes nearer to preserving individual rights than does a democracy.

Madison and others rejected popular vote as the method of making laws. Instead, Article I of the Constitution provides for representation through the election of Senators and Congressmen to the Senate and House of Representatives. These legislators would represent us and make laws—laws that should protect and promote individual freedom. The government was to be guided by clearly defined laws, not by direct majority rule, which would lead to oppression.

Although Thomas Jefferson did not participate in the work on the Constitution, he understood why a republic was superior to a democracy. He also knew what the basic purpose of a republic was: "The true foundation of republican government is the equal right of every citizen, in his person and property, and in their management."

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A republic meant a government that allowed the people of the United States to work freely, associate freely, and otherwise plan their own lives in the way they pleased—equal rights shared by all citizens. Speaking of the national or central government of the United States, Article IV, Section 4 of the Constitution says: "The United States shall guarantee to every State in this Union a *Republican Form of Government,* and shall protect each of them against Invasion . . ." (emphasis added).

A third principle of our Constitution that defends individual liberty is federalism. When we speak today about the "federal government," we refer to the executive, legislative, and judicial branches of the central government located in Washington, D.C. In the minds of the Founding Fathers, though, federal government was an all-encompassing term used to describe a nation made up of sovereign states—a nation composed of a central or national government (the folks in Washington, D.C.) and state governments (Delaware, South Carolina, Connecticut, etc.).

Notice that the Constitution recognizes that the United States *are,* not "is," a union of sovereign states. Article III, Section 3 reads: "Treason against the United States, shall consist only in levying War against *them,* or in adhering to *their* Enemies . . ." (emphasis added). Although the Founding Fathers considered themselves as Americans and citizens of a unified nation, they also considered themselves citizens of separate, self-governing states. The United States were considered in the plural, not the singular. Thus, treason against the United States was against *them,* not *it.* This fact stresses the federalist nature of the government established by the Constitution.

The Separation of Powers to Protect the Citizenry

The Constitution provides for federalism that grants some powers to the national government and other powers to the states. This federal separation of powers acts as a safeguard to personal freedom. Federalism places the burden of law-making and political decisions upon power units close to the supervision of the citizenry. The Founding Fathers did not want the national government in Washington, D.C., telling the people of Virginia or North Carolina what to do.

Thus, political power was distributed among the different state, county, and local governments, enabling the people to govern themselves. This widespread distribution of authority makes it more difficult for one power unit to infringe upon the constitutional rights of the citizens.

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The Founding Fathers provided for another form of separation of powers. This is the fourth aspect of the Constitution's defense of individual liberty. The national government, or, as we say, the federal government, was split up into three separate branches with each branch having distinct, limited powers.

Basically, the executive branch of government headed by the President and his Cabinet carries out constitutional laws and duties. The legislative branch made up of the Senate and House of Representatives makes the laws, while the judicial branch (the Supreme Court and federal courts) decides whether or not laws have been violated in light of the Constitution.

Three Branches of Government

The authority and powers of the three branches of the federal government are balanced and checked by one another. For example, the President can veto laws passed by Congress. Congress, on the other hand, can withhold funds from executive agencies. Although Congress can pass legislation, the Supreme Court has the power to declare certain laws unconstitutional, making them null and void. The President appoints federal judges and various civil servants, but the Senate can refuse to ratify major appointments. The federal judiciary can find individuals guilty of crimes, but the President has power to grant pardons and reprieves.

This separation of powers, like federalism, should act as a checks and balances system to keep government from going beyond the boundaries of its constitutional authority. No single branch of government should have the combined power to make, interpret, and enforce laws.

The United States Constitution is really a remarkable document. It is a monument to personal freedom. The Founding Fathers distrusted government, and they attempted to shackle political power when they adopted the Constitution. It restricts government to the primary responsibilities of providing for the common defense, maintaining domestic security and peace, and protecting individual rights.

The Bill of Rights

When we think of individual rights, we usually have in mind the first ten amendments to the Constitution, the Bill of Rights. Much has been written about the first eight amendments which include assurances of freedom of religion, speech, and press . . . the right to bear arms . . . the right to trial by jury, etc. Not enough is said, though, about the Ninth and Tenth Amendments.

The Ninth Amendment states that "The enumeration in the Con-

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stitution of certain rights, shall not be construed to deny or disparage others retained by the people."

This amendment assures the individual that he has other rights besides those listed in the Constitution and previous eight amendments. These unnamed rights cannot be taken away just because they are not mentioned in the Constitution. We have such rights as "the pursuit of happiness," not included in the Constitution but stated earlier in the Declaration of Independence.

Now look at the Tenth Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

This important amendment says that all powers not granted by the Constitution to the national government are retained either by the states or individual citizens. Likewise, all powers not prohibited by the Constitution to the states are left in the hands of the states or people themselves.

Unfortunately, many of our government officials today act as if the Ninth and Tenth Amendments do not exist. They have twisted the meaning of the Constitution and the role of government. They look upon the Bill of Rights as rights granted to us by a supposedly benevolent government. In reality, the first ten amendments are a list of prohibitions against government *interfering* with those rights. Our legislators should listen to Daniel Webster.

Webster was only a youngster when the Constitution was ratified in 1788, but in later years he earned the reputation of being "The Defender of the Constitution." During a Senate speech in 1830, he declared:

"The people, then, Sir, erected this government. They gave it a Constitution, and in that Constitution they have enumerated the powers which they bestow on it. They have made it a limited government. They have defined its authority. They have restrained it to the exercise of such powers as are granted; and all others, they declare, are reserved to the states or the people."

A Framework for Freedom

The Founding Fathers knew that the basic responsibility of government was to serve as a "watchdog" to maintain a free society of free individuals working together freely. Improved working conditions . . . better education . . . good health care . . . material progress—all of these are goals that people work toward. The purpose of government is to ensure the necessary freedom that will permit individuals to work for those goals through self-responsibility, individual initiative, the free market, and voluntary ex-

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change. Government has the responsibility of providing a framework that will allow individuals to achieve prosperity and dignity on their own.

The Founding Fathers were not men who felt that the purpose of government was to plan, formulate, and then implement specific ways to achieve the goals of a nation. Government was not to be in the business of providing public housing or job training through its political, economic, or social legislation. Government was not to mold society but, instead, allow society to mold itself freely.

Let's consider some advice from Jefferson: ". . . Still one thing more, fellow citizens—a wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government. . . ."

We need to see how far we have strayed away from the Constitution. Not only is government poking its bureaucratic nose into where it should not be, it is not fulfilling one of its primary constitutional responsibilities—deterring crime. Government is supposed to prevent, prosecute, and punish crime, but now government itself has become the lawbreaker of the Constitution.

The Enemy Within

Many of our public officials have broken their oath of office. They affirm or swear that they will support the Constitution and defend it "against all enemies, foreign and domestic." There is the foreign threat of Marxist subversion and aggression. More dangerous, however, are the domestic enemies—individuals whose actions and attitudes are corrupting the Constitution. Those individuals include some of the very government officials sworn to uphold the Constitution.

Actions by the executive, legislative, and judicial branches of the federal government have proven that many officeholders apparently do not understand the Constitution. If they do know what the Constitution stands for, then we should hold them responsible for willfully repudiating their oath of office.

Two tasks are before us. First, we must have a firm appreciation for the Constitution. Second, we must have a clear understanding how and why the Constitution is being defied. Until we face the truth, we will slide steadily towards the eventual destruction of freedom in the United States.

(Editor's note: Part II of "Against All Enemies" will appear in the next issue of *The Freeman.)*

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Henry Hazlitt

HOW TO RETURN TO GOLD

THE economic letter of the Texas Commerce Bank, dated April 18, discussed the problems of returning to the gold standard, and decided that such a return should not be attempted. The bank's discussion reveals a number of misconceptions of how a gold standard functions. As these misconceptions are probably widespread, they are worth analysis.

The bank takes for granted, without explicitly saying so, that the only form of gold standard now being recommended is a full, 100 percent gold backing for outstanding money and credit. This is not the system that prevailed in the nineteenth century, or at any time since. What the world then had—and now calls the "classical" gold standard—was a *fractional* gold reserve system—that is, one in which each nation's gold stock represented only a fraction of its outstanding money and credit.

My own preference happens to be for a full gold standard. But as most advocates of a return to the gold standard have in mind the previous fractional reserve system, that should be discussed first. The basic objection to it is that until the reserve falls to the legal minimum fraction permitted, there is continuous pressure from banks to continue expanding their loans. But when the minimum reserve is reached, political pressure is likely to develop to reduce the required gold reserve

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Henry Hazlitt, noted economist, author, editor, reviewer and columnist, is well known to readers of the *New York Times, Newsweek, The Freeman, Barron's, Human Events* and many others. For more on inflation, see his recent book, *The Inflation Crisis, and How to Resolve It.*

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still further to permit the volume of credit to be further increased. The historic tendency, therefore, is for the required gold reserve to be constantly attenuated.

Dwindling Reserves

When the United States officially ceased gold payments in 1971, for example, its outstanding quantity of money and credit (M-2, including both demand and time bank deposits) had expanded to $454.5 billion. Against this, the U.S. gold stock was only about $12.3 billion (291.60 million fine troy ounces at $42.22 an ounce), or only 2.7 percent. In other words, there was only one dollar in gold to redeem every thirty-seven dollars of paper credit.

The situation was even worse than this, because under the then existing "gold-exchange" standard, the currencies of all other countries—more than 100 of them—in the International Monetary Fund were convertible merely into dollars, while only the dollars were directly convertible into gold. This made our American gold reserve equal to only some small fraction of 1 percent of the total outstanding money and credit which was supposed to be directly or indirectly convertible into it.

When the Texas Commerce Bank's letter contends that a return to the gold standard would "tie changes in the money supply to changes in the quantity of gold in Ft. Knox," and on a dollar-for dollar basis, it is assuming, as I have already pointed out, that the return would be to a 100 percent gold reserve system.

It falls into a number of other misconceptions. It assumes, for example, that to return to a gold standard the government would once more have to establish a fixed relationship between the dollar and an ounce of gold—a new official "price" for gold—and it mentions $450 as a possibility.

But under today's conditions, when every nation on earth has abandoned the gold standard, and nearly all of them have followed recklessly inflationary policies for the last ten or twenty years, it would be practically impossible for the monetary managers of any one country to establish a fixed relationship between its present currency unit and gold that they could count on not to prove either dangerously inflationary or dangerously deflationary.

When the United States, after its greenback adventure in the Civil War, decided in 1875 to return the dollar to the previous gold parity, beginning in 1879, and when Britain decided in early 1925 to work its way back to the old parity of $4.86 for the pound, both countries experienced several years of severe deflation and unemployment.

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Today it would not only be difficult and dangerous, but unnecessary, for any country to try to tie the purchasing power of its existing paper money to any fixed ratio with a new gold-standard currency. All that would be necessary would be the minting of a new gold coin (and perhaps the issuance of gold certificates), stamped not in dollars, pounds, marks, or any other national unit, but simply with its weight—an ounce, a gram, ten grams, or whatever. (If coined in a metric unit of weight, such as a ten-gram piece, it would circulate as an international medium of exchange no matter by what leading country issued.)

Countries issuing such coins should make neither them nor their previous irredeemable paper currencies compulsory legal tender. The market rate between their paper currencies and gold would be left free to fluctuate daily. Private citizens would be free to make contracts with each other for repayment of new long-term debts in either paper or gold, and such contracts should be enforceable. Private citizens, corporations or banks should also be free to mint gold coins and issue gold-certificates against them, subject to suit for fraud, short weight or non-performance. Within such a legal framework, an alternative and dependable currency system would always be available for increased use whenever a paper currency began depreciating so fast that nobody wanted to continue doing business in it.

Two Possibilities

Let me sum up. There are two possible kinds of gold standard, one requiring only a fractional gold reserve against outstanding currency and credit, the other requiring a 100 percent gold reserve against it. The first was the kind the Western world actually operated on from about the middle of the nineteenth century to 1914 (and to some extent in later periods until 1971). The problem with it is that either the required fraction of gold reserve keeps being reduced as the legal minimum reserve is approached, thus permitting a great deal of inflation even under the gold standard; or credit that has been expanding must be suddenly tightened to prevent the gold reserve from falling below the set legal limit. In the second case, which frequently occurred, individual countries, seeking to safeguard their gold reserves, suffered the familiar cycles of credit expansion and contraction, boom and depression.

A 100 percent gold reserve system prevents this consequence. But under it, prices do depend upon the existing gold supply; the volume of money and credit cannot be expanded at will. There can be no inflation. And that is precisely why

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so many people oppose the system. That is why the author of the Texas Commerce Bank letter opposes it. In his words, it "cannot support the increased needs for liquidity arising from greater world trade. . . . The gold standard does not provide sufficient flexibility to deal with today's complex domestic and international conditions."

By "flexibility" the bank means credit expansion. And credit expansion, when left to the whim of government authorities, means inflation. The great merit of the gold standard is precisely that it takes the decision regarding the quantity of money out of the hands of the politicians. The quantity of gold can only be determined by the physical amount that is discovered, extracted and refined, whereas the quantity of paper money can be determined by political caprice.

Misplaced Fears

Opponents of the gold standard sometimes express the fear that new annual supplies of gold will finally prove insufficient to "carry on the growing volume of world trade." Such fears are misplaced. The existing amount of money is always sufficient to carry on the existing volume of trade; it is merely the overall price average that is affected.

There is, of course, a theoretic possibility that the annual increase in gold supplies might finally prove insufficient to keep commodity prices from falling dangerously and disruptively. Such a shrinkage in new gold production has never actually occurred. The opposite has. There have been "gold inflations," like that following the gold rush to California in 1849 and later discoveries. But the worst that could happen, if new gold supplies started to dry up, would be a return to a fractional instead of a 100 percent gold standard.

"The myriad problems of adopting the gold standard," reads the last sentence of the bank's letter, "suggest that its adoption is not the optimal way to control inflation." It is significant that the bank letter does not tell us what this optimal way would be. The experience over the last decades of 140 members of the International Monetary Fund proves that it could not be continuance of irredeemable currencies under government regulation. Return to the gold standard is not only the "optimal" way to control inflation; it is the only way.

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Randall R. Rader

Remonetizing Gold, Again

The Gold Room, New York City, 1869

SINCE 1933 when President F. D. Roosevelt prohibited private ownership of gold, United States money has been completely in government hands. Monetary instability has, consequently, been institutionalized. Inflation has followed wave of inflation. Just consider some figures: From 1967 to 1978, the consumer price index doubled. In 1979, the index rose by 14 per cent—a pace that would double the CPI again in only 5 years. Yet the first months of 1980 have shown the CPI increasing at an annual rate of around 20 per cent. These figures speak for themselves. Government has lost control of inflation. Anticipating two centuries ago that the federal government would not have the restraint to avoid the temptation to inflate, the Constitutional Convention carefully circumscribed the government's monetary authority.

"The congress shall have power to coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures." (Article I, Section 8.)

The framers of the Constitution gave Congress authority to "coin money," but specifically withheld authority to create money. By carefully choosing the verb "coin," they wisely designed to limit the government to stamping metal into money. The Articles of Confederation, from which was derived the idea to give the government power to "coin" metal, granted as well only

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the specific power to "strike coin." At the time of the Constitution's ratification, it was clearly understood that the Congress should only have authority to strike coin and regulate its alloy and value:

The *Federalist Papers,* Number 44, clarify:

> The right of coining money, which is here taken from the States, was left in their hands by the Confederation, as a concurrent right with that of Congress, under an exception in favor of the exclusive right of Congress to regulate the alloy and value. In this instance, also, the new provision is an improvement on the old. Whilst the alloy and value depended on the general authority, a right of coinage in the particular States could have no other effect than to multiply expensive mints, and diversify the forms and weights of the circulating pieces.[1]

Fixing the Weight

The framers of the Constitution knew the dangers of irredeemable paper currency. They had experienced the uncertainty and disappointment of an unbacked currency during their struggle for independence. Therefore, they placed the coining authority in the same sentence with the authority to set weights and measures. They were only giving the central government the power to decide what weight of metal each coin would contain. This allowed Congress to mandate uniform denominations nationwide. Thus, as explained in *Federalist Paper* 44, Congress would provide for harmony and smooth commerce amongst the states. But Congress could no more debase its coinage than it could reduce its fixed standard of twelve inches to the foot down to seven inches. Just as it could "fix" a permanent standard of measurement, Congress could "coin" a permanent standard of money.

The Constitutional "coining" clause needs only one further explanation. The "power to regulate the value thereof" did not imply anything more than the right to add, if necessary, new standard coins. In the words of the Supreme Court, "This power of regulation is a power to determine the weight, purity, form, impression and denomination of the several coins, and their relation to each other, and the relations of foreign coins to the monetary unit of the United States."[2]

The framers in an earlier clause allowing Congress to "borrow money" expressly avoided stating the Congress could "regulate the value" of the money it borrowed. The framers were wary that borrowing would be the means of debasing the nation's money. Moreover, if they had meant to give Congress the right to debase the nation's coinage with the "regulate" language, they would have extended that regulating power to borrowed money as well. Perhaps the Constitution's view of money is best expressed in

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summary by this Supreme Court pronouncement:

> The power of coining money and regulating its value was delegated to the Congress by the Constitution for the very purpose, as assigned by the Framers of that instrument, of creating and preserving the uniformity and purity of such a standard of value.[3]

Thus, under the Constitution, the Congress launched the gold standard. The dollar was simply a name for a specified weight of gold, one-twentieth of a gold ounce. Because the rest of the world also used gold as money, the world enjoyed the economic blessing of a universal currency. One money worldwide facilitated freedom of commerce, travel, and investment across national borders. Without force or external governmental constraint, workers specialized and cooperated internationally. No wonder the nineteenth century saw unprecedented economic growth. Indeed, much of our current progress must be attributed to the accumulation of capital that occurred during the "golden" economic decades.

The result of leaving the gold standard in 1933 has been clear. The Consumer Price Index in 1933 was 38.8 (1967 dollar equals 100) on all items. In 1979, that index has soared to 217.4—nearly a six-fold increase. The index only failed to rise in three of the 46 years since the gold standard was abandoned.[4] The government has demonstrated its inability to maintain price stability. Once before, the United States left the gold standard only to learn that it must return. A review of that history reveals some instructive parallels with our current plight.

The Civil War Era

The Civil War demanded that the federal government immediately produce wealth it did not have. This led to a sad experience with fiat currency.

As the clouds of war began to gather (South Carolina seceded in December, 1860), the Treasury—already weakened by three years of deficits—began to experience great difficulty in borrowing money. Into this tenuous atmosphere stepped the new Secretary of Treasury, Salmon P. Chase. Already the national debt stood at $75 million, of which $18 million had been incurred in the few months since the secession.[5]

Supposing that the impending war would be won in a few weeks (a common miscalculation), Secretary Chase decided to finance the conflict by issuing more debt. Chase did not anticipate how much he would have to borrow. Throughout 1861, the Treasury was incurring obligations at an alarming rate, faster than it could finance them. In a vain attempt to meet these obligations, the Treasury issued bonds, i.e., borrowed, so swiftly that gold was pour-

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ing out of the banks. Confidence that the banks could redeem in specie began to waver. The banks feared a run on their remaining specie reserves.

At this juncture, Chase made a grievous mistake which turned the state banks against him. Chase had been using the banks as temporary depositories for the proceeds of the loans. Many of the loans came from the banks themselves. The banks expected to hold the specie until the government needed it. But Chase required the specie to be transferred, without delay, to the Treasury. The banks thus saw the depletion of their gold reserves accelerate.

In July of 1861, the North lost the First Battle of Bull Run. The financial community realized that the war would not soon be over. In mid-December, Chase's financial report to the nation increased an earlier 1862 budget by $200 million. The federal government's borrowing would grow even more. Already banks saw their gold stocks disappearing daily. In New York City alone, the banks were losing $7 million of specie a week. Finally, on December 16th, the British demanded return of two Southern emissaries forcibly removed from the British steamer *Trent*. Great Britain seemed to be siding with the South. Panic spread in the financial community. On December 30th, the private banks suspended specie payments. The government suspended specie payments the next day.

Greenbacks

Chase still had to meet obligations that were approaching $2 million a day. The people were not prepared to absorb such enormous loans, and the banks could not invest all their funds in government loans. Accordingly, voluntary domestic loans were not coming in fast enough to fund the war effort. Nor could loans be obtained overseas due to an unfavorable balance of trade and uncertainty about the outcome of the war. The pressure on the government to meet its financial promises mounted.

Chase continued to issue notes, but now they were not redeemable. No one would accept them as payment. Seven weeks after suspension of specie payment, at Chase's request, Congress passed a law making the notes legal tender. The greenbacks were born. The first "temporary" issue was set at $150 million. In July 1862, another $150 million was allowed. Later, yet another $150 million was authorized. These were the infamous Legal Tender Acts. In essence, Congress decided to impose involuntary debt upon the nation.

In retrospect, Chase was later to admit that this was a great error. He

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said to Congress in 1863 that it was not too much, and perhaps hardly enough, to say that every dollar raised by taxation for extraordinary purposes or reduction of debt is worth two in the increased value of national securities. He learned too late that a nation, like any individual, must live within its means, that current taxes must at least cover current expenses.

Overt Taxation Preferred to Hidden Tax of Inflation

Taxes are always undesirable because they deprive individuals of the capital and incentive to continue to produce, especially when they reach confiscatory rates. Nonetheless, overt taxation is preferable to the covert tax of inflation because it is more easily monitored. The representatives of the people in Congress must vote unambiguously to deprive their constituents of wealth when approving an overt tax. The covert tax of inflation also deprives the constituents of wealth, but the representatives escape the consequences. The constituents do not file an "inflation tax" return every year to acquaint them with the extent of their losses. Thus the representatives are tempted to perpetually inflate the currency to raise revenue which they can spend.

An economist Chase never encountered, John Maynard Keynes, offered a concise, though somewhat ironic, appraisal of inflation. He cautioned that inflation "engages all the hidden forces of economic law on the side of destruction, and does it in a manner which not one man in a million is able to diagnose."[6] Chase apparently sensed, too late, the ultimate evil of inflation: it circumvents the citizen's ability to hold his government accountable.

Many representatives arose in Congress to criticize the Legal Tender Acts. Nonetheless they were approved by wide margins because of the temporary emergency. (Isn't every fatal poison administered as a serum to alleviate some "temporary emergency"?) Everyone, including President Lincoln, swore that the nation would soon mend its erroneous ways. In December 1862, Lincoln thus addressed the Congress:

> The suspension of specie payments by the banks, soon after the commencement of your last session, made large issues of United States notes unavoidable. In no other way could the payment of the troops, and the satisfaction of other just demands, be so economically or so well provided for. . . . A return to specie payments, however, at the earliest period compatible with due regard to all interests concerned, should ever be kept in view. Fluctuations in the value of currency are always injurious. Convertibility, prompt and certain convertibility into coin, is generally acknowledged to be the best and surest safeguard against them.[7]

The greenbacks began to depre-

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ciate in terms of specie almost as soon as they were issued. On the New York gold market (conversion to specie was allowed in this single location to facilitate international trade), gold could be purchased at a premium with greenbacks. In 1864, greenbacks depreciated to their all-time low: $1 of gold equal to $2.85 of paper or $1 of paper worth only 35¢ of gold.[8]

The Post-War Era

After the war, Federal expenditures dropped sharply. While the government was spending $37 per capita in 1865 to finance the war, spending was only $14 per capita the following year.[9] Due to tax revenues, the government already had a surplus in 1866.

In 1865, Congress voted (with only a single dissenter) to begin retiring the greenback debt. McCulloch, the new Secretary of Treasury, implemented that policy with revenue surpluses.

At that point, however, sentiment began to grow in favor of retaining the greenbacks as non-interest-bearing debt. The masses (primarily in the agrarian states) mistakenly believed that retiring greenbacks was depriving them of money. Some debtors, however, knowingly advocated inflation to escape the full consequences of their borrowing. They urged the government to use "cheap tender" to pay off its war debts. Greenbackism began to take hold.

The Democratic party took up the cause of greenbackism. Many of the leaders who had stood on the floor of the House and declared paper "money" unconstitutional now argued that gold-convertible bonds be paid in greenbacks. Only two years after all the fervor to retire the debt, a Republican congress enacted a bill halting contraction of the debt. This measure was intended to allow the people to escape debt and cope with high prices. Instead, prices remained high; debt multiplied; depression spread. The greenbacks were in fact causing the problems they were supposed to cure. Throughout the next few years, Congress would occasionally consider a measure to replace the non-interest-bearing debt (greenbacks) with interest-bearing debt (bonds). These were defeated.

Supreme Court Rulings

The Supreme Court entered the debate over the integrity of our money in 1870. Chief Justice Chase issued in 1870 a finding that the Legal Tender Acts were unconstitutional as applied to pre-existing contracts. Speaking for the Court, he stated:

> For no one will question that the United States notes, which the act makes a legal tender in payment, are essentially unlike in nature, and, being

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irredeemable in coin, are necessarily unlike in value, to the lawful money intending by the parties to contracts for the payment of money made before its passage.[10]

This is the same Chase who as Secretary of the Treasury issued the paper nine years earlier. He pronounced this judgment upon his own action:

And there is abundant evidence, that whatever benefit is possible from that compulsion to some individuals or to the government, is far more than outweighed by the losses of property, the derangement of business, the fluctuations of currency and the values, and the increase of prices to the people and the government, and the long train of evils which flow from the use of irredeemable paper money.[11]

This statement now echoes as a grim prophecy about the current age of inflation. He did not base his decision merely on the effects of inflation, however, but went on to substantiate his decision with reasoning based on the "coining" clause of the Constitution and the Fifth Amendment which prohibits the government from impairing private contracts or depriving citizens of property without due process of law. He concluded that his own action as Secretary of Treasury violated both the letter and the spirit of the nation's most sacred document.

No effort was made to conform to the 1870 decision. On the contrary, every effort was directed at changing the make-up of the Court to reverse the ruling. President Grant appointed two railroad lawyers to the bench who were sympathetic to the railroad's deep debt and desire to repay loans with inflated currency. The monumental *Hepburn v. Griswold* decision, which could have prevented the United States from ever suffering from wholesale inflation, was retried and fell, 5-4, the following year. The heart of the Court's reversing decision was an expediency argument:

If it be held by this court that Congress has no constitutional power, under any circumstances, or in any emergency, to make treasury notes a legal tender for the payment of all debts, . . . the government is without those means of self-preservation which, all must admit, may, in certain contingencies, become indispensable even if they were not when the acts of Congress now called in question were enacted.[12]

Chief Justice Chase, now writing a bitter dissent to the majority decision, could only reiterate:

We perceive no connection between the express power to coin money and the inference that the government may, in a contingency make its securities perform the functions of coined money, as a legal tender in the payment of debts.[13]

If one Supreme Court decision could be expunged to have the greatest altering effect on our current economic conditions, this would be the one. Inflation could have been

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pronounced dead and sealed in a tomb of law, instead it was reincarnated by this last Legal Tender Case.

The Legal Tender Cases did not quiet the constitutional debate, however. The Court had implied that the greenbacks were constitutional only because the war emergency warranted drastic action. The emergency was over and greenbackism persisted. Despite the doubts, Boutwell (another Treasury Secretary) began to issue more greenbacks.

Resumption

Specie coins continued to circulate throughout this period. The greenbacks were, of course, always worth less than the coins. In fact, the coin value of greenbacks varied with the amount of paper in circulation, the degree of uncertainty that the paper would ever be redeemed, and the strength of general consent to accept payment in paper. Early in 1873, the coin value of paper currency dipped significantly. Due to Gresham's law, "bad money drives out good," coins were held out of circulation. Moreover, lenders hesitated to extend credit, fearing payment in depreciating currency. Traders were reluctant to accept greenbacks. At harvest time, these inflationary pressures caused a scarcity of money. This developed into panic in 1874.

The treasury, of course, was asked to print more greenbacks. The nation's attention was focused on a bill to authorize more unbacked paper currency. It passed Congress and the debate shifted to the White House. The eastern establishment (primarily creditors) protested against this inflation bill and urged a veto. The agrarian debtors west of Ohio were arrayed in favor of the measure. The whole issue of greenbackism had reached a climax.

As long as the matter of the currency's integrity was only debated in the intellectual circles of Washington, D.C., no wave of popular fervor developed on either side of the question. This bill made the issue public. In the perspective of the bulk of the people, the nation's honor was at stake. Grant, sensing the public mood, vetoed the bill on April 22, 1874, reminding the nation that Congress had repeatedly passed resolutions promising to discharge the war debt and return to sound money:

> Among the evils growing out of the rebellion, and not yet referred to, is that of an irredeemable currency. It is an evil which I hope will receive your most earnest attention. It is a duty, and one of the highest duties, of Government to secure to the citizen a medium of exchange of fixed, unvarying value. This implies a return to a specie basis, and no substitute for it can be devised. It should be commenced now and reached at the earliest practicable moment consistent with

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Debtors and Creditors

A poor man never gets to be a big debtor. Only a rich man, or a man with a reputation of being rich, can get into that situation. It is economic nonsense today to talk of a "debtor class" and a "creditor class" as if these represented separate groups necessarily at different economic levels. Each of us is to some extent debtor, to some extent creditor. Even if it were possible to work out a statistical average, based on the net position of each of us, it is more than doubtful that the "creditors" would prove on the average to be richer than the "debtors"; it is much more probable that the relationship would prove to be the other way around. Nothing but injustice, discouragement of work and thrift, encouragement of speculation and gambling, and economic disruption can follow from an effort to swindle creditors at the expense of debtors by a constant lowering of the purchasing power of the monetary unit.

HENRY HAZLITT, from his introduction to the 1959 edition of Andrew Dickson White's *Fiat Money Inflation in France.*

a fair regard for the interests of the debtor class . . . Fluctuation, however, in the paper value of the measure of all values (gold) is detrimental to the interests of trade. It makes the man of business an involuntary gambler, for in all sales where the future payment is to be made both parties speculate as to what will be the value of the currency to be paid and received.[14]

The issue, which had bubbled along beneath the nation's consciousness for years, was now in the open and decided. There was no turning back. Congress felt honorbound to uphold its promises. A bill quickly passed to limit greenback distribution. Congressional elections in 1874 restored the Republicans to power in Congress and they immediately adopted the Resumption Act which effected specie payment by 1879. The conversion happened smoothly.

Results of 1879 Resumption

In 1861, when the U.S. abandoned the gold standard, the consumer price index rested at 27 (1967 dollar

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equals 100). By 1864, the index had soared to 47—almost a doubling. Prices remained high, between 36 and 46 on the index scale, until the Resumption Act was adopted in 1875. The value of the currency fluctuated wildly during this period. Indeed it lost one-tenth of its value in a single day. This decade provides some instructive lessons about the causes of our own age of inflation. The politicians of this period, in order to stay in power, were willing to sell the notion that more paper currency meant more wealth. Advocates of greenbackism thought they wanted more paper currency; they really needed more capital, a greater capacity to produce. Nonetheless, it took the nation a decade to learn that lesson.

The year 1879 brought the resumption of the redeemable currency. The consumer price index stabilized at 28 in that year. For more than three decades thereafter (World War I interrupted the price tranquility), the index never rose above 29 or dipped below 25. The index remained at 27 for a decade.[15] Never did it rise or fall more than a single point in a year. The gold standard worked throughout that entire period to keep prices remarkably stable.

The United States has been locked for years in a devastating cycle of inflation. Each flare up of inflation is followed by recession. But the bottom figure for inflation each time through the cycle is higher than the last bottom. The launching platform for the inflation take-off is always higher. If the cycle continues, our inflation may go over 50 per cent in the eighties. The current 20 per cent rate is already intolerable. America returned to the gold standard in 1879. A century later, it needs to return again.

—FOOTNOTES—

[1]*The Federalist Papers,* Alexander Hamilton, James Madison, John Jay; The New American Library of World Literature, 1961. Republication of original essays explaining and defending the Constitution.

[2]*Hepburn v. Griswold,* 8 Wallace 604, 616 (1869).

[3]*U.S. v. Marigold,* 9 Howard 567 (1850).

[4]*Handbook of Labor Statistics 1978,* U.S. Department of Labor, Bureau of Labor Statistics Bulletin 2000, 1979; Table 116, Page 369.

[5]*Financial History of the United States,* Paul Studenski and Herman E. Kroos, McGraw-Hill Book Company, Inc., 1952.

[6]Address delivered by John Maynard Keynes at 1919 Paris Peace Conference.

[7]*Messages of Presidents,* Volume VI, December 1862.

[8]*Financial History of the United States,* supra.

[9]*Financial History of the United States,* supra.

[10]*Hepburn v. Griswold,* supra at 607.

[11]*Hepburn v. Griswold,* supra at 621.

[12]Legal Tender Cases, *Knox v. Lee* and *Parker v. Davis,* 12 Wallace 457, 529 (1870).

[13]Legal Tender Cases, supra at 574.

[14]*Congressional Record,* 43rd Congress, First Session, 3270-3271 (April 22, 1874).

[15]*Handbook of Labor Statistics 1978,* supra.

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Leslie Snyder

The Corruption of Language

JOHN LOCKE said "Language is the great bond that holds society together." Language is the common conduit whereby knowledge is conveyed from one man and one generation to another. It accomplishes this crucial task by enabling us to record our own thoughts and to communicate with others.

Today we are witnessing a corruption of our language, effectively destroying the bond that holds society together. There are several reasons for this, but all of them have a common goal—"to darken truth and unsettle people's rights," as Locke put it.

To appreciate the crucial and indispensable task that language performs, one needs only to understand what language is and how it functions; that is, language is primarily a tool of cognition. It provides us with a system of classifying and organizing knowledge. It enables us to acquire knowledge on an unlimited scale and to keep order in our minds, which means, enables us to think. The principal consequence of language is communication.

Thus it is by the retention of concepts, i.e., language, that man retains knowledge. And to the extent he files his knowledge efficiently, the easier it is to recall it, add to it, change it, discard it, and communicate it to others. Locke, who thoroughly appreciated this, encouraged mankind to think clearly and concisely, so that all should know what their rights are, that progress could take place, and mankind live in peace.

Why do some people choose to cor-

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rupt words? Perhaps to persuade others of a certain point of view or to win an argument at any cost, regardless of where the truth lies. Some do it simply to sell a product or to make a profit. But we are concerned here with those of evil intentions who wish to "unsettle people's rights." They will employ any means to gain their end, such as obscurantism, obfuscation, deception, and falsification.

Other techniques of corrupting language, according to Locke, are to abuse words by either applying old words to new and unusual significations, introducing new and ambiguous terms without defining either, or else putting words together to confound their ordinary meaning.

The Dollar Devalued

To illustrate the technique of applying new and unusual meanings to old words, here is how the standard of value—the Dollar—was corrupted. Prior to 1933, the Dollar was a "standard unit of value," of twenty-five and four-fifth grains of ninety percent fine gold. Since then the United States government has phased out the gold standard and substituted its own absolute control over the value of the currency (with the resulting depreciation of the dollar, i.e., inflation).

As a result of the corruption of this crucial standard, other values have been likewise corrupted: productiveness, self-reliance, honesty, independence, and integrity. For the promise of security, many Americans have sold their birthright of freedom.

This is clearly deceptive for while government promises to pay for security—free education, health insurance, social security, and the like—it is corrupting the very medium it uses as payment, namely the currency. Eventually there will be no education, no health insurance, no employment, no real currency, no security, and no freedom.

Another method of undermining a free country, to "darken truth and unsettle people's rights," is to corrupt the citizens' sense of justice. Frederic Bastiat's *The Law* explains how governments use laws and justice interchangeably, because most people view law and justice as one and the same thing. Thus it is only necessary for a law to decree something and it appears just and proper. Examples of using laws to sanction injustices are compulsory education, progressive taxation, conscription, welfare programs, and legal tender. Once the distinction between justice and injustice has been obscured the citizen has been placed in the tenuous position of choosing between justice and disrespect for such laws and those who passed them.

Justice, however, is a state where men live honestly, hurt no one, and

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give to every one his due; it is not an excuse to rob Peter to pay Paul. An unjust society not only darkens truth, it leads to an unhappy and discontent society. The corruption of words is an insidious process which spreads like a cancer, corrupting and destroying everything around it.

At Whose Expense?

The word "freedom" has also been perverted. It once meant to be free from political oppression. Now it means freedom from wants and needs—from hunger, unemployment, sickness, illiteracy, old-age worries, and the like. The question to ask here is, at whose expense? Then it becomes obvious that these new freedoms are at someone's expense, and are not really freedoms, but irresponsible promises by government.

Related to these newly promulgated freedoms is the ambiguous phrase "economic rights." Thus the new freedoms have become political "rights." But while government promotes nefarious "economic rights," it is actively destroying our true political rights: life, liberty, and pursuit of happiness. Because someone must pay for these "economic rights" we are actually enslaving some part of the populace in the name of and benefit for some other part of the populace. But there can be no right to enslave another. Either the nation is free or it is not. As Albert Jay Nock said in response to Franklin Roosevelt's Four Freedoms: "There is no such thing, four or forty. Freedom has no plural. Freedom either is, or isn't."

A second technique of corrupting the meaning of rights is quite subtle, but highly effective, because it seems to call attention to them. Locke called this "pretending to inform." Nowadays it takes the form of advocating "human rights." We hear this phrase constantly, and yet, what does it mean? Do we hear anything about the right to life, liberty, and pursuit of happiness in connection with it? We get the feeling that somehow it is an empty phrase, devoid of any worthy meaning.

As there can be no other rights than to sustain, protect, and enjoy one's life, any slogans advocating other rights are in fact "anti-rights." They necessarily abrogate the very essence of a right and substitute instead privileges or favors, which are bestowed on one group at the expense of another by a higher authority, in this case the government.

Confounding the meaning of words can successfully corrupt them. As for example, the meaning of the word "control" has been distorted by connecting it with an object such as price, wage, gun, or credit. But to control an inanimate object is nonsense. The real issue is "people" control. Under the guise of

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"regulating" certain vital segments of the economy, the government has acquired control over individual lives.

Control of People

All knowledgeable people will admit that wage, price, and credit controls can never end currency depreciation. They merely suppress symptoms. They distract the uninformed person from the cause of inflation, which is government's monetary policy, to focus on the effects, which are the continually rising cost of labor, products, and money. The government gives the false impression of taking positive action. But, in fact, it is only interfering with free markets, which are trying to cope with a depreciating currency. In reality, the government has acquired control over people.

One should always be on guard against any political phrase which contains the word "control" in it. For whenever a government decides to control some *thing,* it invariably means to control some *one.*

Regulations are used in the same manner. To regulate a business, to license a practitioner, is to regulate and control a person. The horror becomes obvious when regulations and licenses are applied to the arts, where individuals deal directly with abstractions. The alarm is quickly sounded when authors, composers, news media, artists, and the like are threatened by any loss of freedom. Although the principle holds true for every businessman, professional, laborer, and trader, the issue has been successfully obfuscated by government calling for some kind of "regulation." But individuals should never be regulated.

When a government promises to insure quality products, honest businessmen, competitiveness, and integrity by utilizing controls and regulations, it only insures higher costs, lower standards, and the waste of resources.

All forms of human rights, economic rights, the Four Freedoms, wage-price-credit-gun-controls, free education, legal tender, welfare programs, regulations, and so on are in reality, different ways of corrupting the things they are supposedly designed to protect. By employing various forms of obfuscation, obscurantism, deception, falsification, and by pretending to inform, the American Republic has been successfully corrupted from within—morally, politically, and financially.

This state of affairs is properly termed socialism, where individual rights have been replaced by government bureaus and bureaucrats who enforce the decreed regulations and controls. This is the definition and essence of tyranny. It makes little difference whether our rulers are domestic or foreign, American or Russian, whether they are called

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secretaries, leaders, commissions, presidents, or departments; individual freedom has been confined and limited; government power has been unchained and is unlimited. We are an oppressed people.

Improve the Understanding

Where lies the solution? Or should we ask, with whom does the solution lie? How can we sift through the morass of deceptive meanings and corrupt language to reach the truth?

To begin, individuals must assume their own responsibility for acting as thinking, judging citizens. They must question unclear and ambiguous pronouncements coming from politicians, educators, and news media. Fuzzy thinking must not be allowed into the reasoning process. If the general public is satisfied with half-truths, lies, and distortions, this is what it will receive. So we must raise our standards of acquiring knowledge; then these deceptive practices cannot be used against us.

Furthermore, since plain and direct words cannot be "employed to darken truth and unsettle people's rights," as Locke aptly put it, we ought to simplify our lives and the words we use. Long, hard-to-define, ambiguous words, like those coined by bureaucrats and pseudo-intellectuals, are no longer impressive or appropriate. By ambiguous we mean terms like "national wealth," "national state of the economy," and "general welfare," when there are no such things, only individual wealth and individual welfare. We should not want the wool pulled over our eyes nor our emotions comforted with familiar catch-phrases. We must demand the truth in all matters, for the truth always gives a favorable impression to the mind and spirit of man.

In *The Federalist* No. 37, James Madison said, "The use of words is to express ideas. Perspicuity, therefore, requires not only that the ideas should be distinctly formed, but that they should be expressed by words distinctly and exclusively appropriate to them." When we return to using specific concepts to declare our meanings, then our writing, speaking, and language will once more acquire the force of truth and usefulness it should possess.

The Individual Is Responsible for the Freedom Sought

Actually, to end the corruption of the language, individual rights, and our wonderful life-style of freedom and productivity, needs merely the desire and willpower of the people who are the victims being hurt by this insidious process. As in all acts of irresponsibility, it requires the assumption of the responsibility by the individual, who is sanctioning his own destruction, to continually judge issues presented to him, to

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seek the truth, and to settle for nothing less. Dishonest individuals and groups will always try to gain their ends by any means available. So evil can only flourish where the good is ignored and left unattended.

What all of this boils down to is ethics and morality. The corruption of the language is merely a reflection of the corruption of the morals and ethics of the general public. Therefore, just as morality is a personal responsibility, so is the use (or abuse) of language. Keeping language pure, meaningful, and accurate is thus the responsibility of every thinker, speaker, writer, listener, and reader, in addition, every reporter, journalist, publisher, newscaster, and editor.

A free people require individual integrity of purpose and justice in all things. That is what it took to win our liberty. That is what is required of us today to reclaim our liberty, and to make sure that language is indeed the bond that holds society together.

IDEAS ON LIBERTY

Liberty is Limited Government

LIBERTY is limited government. I know that is not the philosophical definition but it is the practical definition. I go along with the theological experts who will say—and I agree—that liberty is merely my right to do what I *ought* to do. I am not at liberty to kill the man next to me. I may have the power but not the liberty to destroy his right. But practically, liberty means limited government. What is the opponent of liberty throughout history? Is it the big corporation, the big union? No. The only institution that has destroyed human liberty irrevocably is big government. The Founding Fathers looked over 6,000 years of human history, and saw the God-given rights of man burned to a crisp at least once in every generation by the fire of government.

. . . We couldn't get along without government, because we are a benighted race. But at the same time, unless you keep government as you keep fire, under control, checked and balanced, separated, divided, tied down, government will destroy you. That is the rationale of our Constitution. It doesn't make sense otherwise.

CLARENCE MANION, "Right and Wrong—Not Right and Left"

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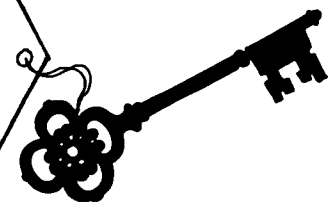
Clarence B. Carson

The Property Basis of Rights



THERE has been an attempt to separate property rights from other rights in this century. It has usually been done by labeling some rights as "human rights" and referring to others as "rights" of property. This distinction has been accompanied by the claim that "human rights" are superior to "property rights." For example, in the late 1950s when the McClellan Committee held Senate hearings on labor union activities, a labor leader put the matter this way: "Well, Senator, my primary concern was the safety and welfare of the people in that area. It simply was against my religion and against my principles and religion at this time to have placed property rights above human rights. . . . I think the obligation was more to protect the human rights than the property rights at that particular time."[1]

The distinction did not go unchallenged. In the 1960s there was even a sort of slogan coined which called it into question. It went something like this: "Property rights *are* human rights." The idea had some appeal. After all, rights are not something ordinarily thought of as belonging to plants or the lower animals. If there is a right to property, it must be first and foremost a *human* right. That was not, of course, quite the distinction the critics of property rights were attempting to make. They referred to property rights as if they were rights belonging to property. Those who challenged this concept maintained, to the contrary, that property rights were really rights of human beings

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to property. Thus, "Property rights *are* human rights."

At the time, I not only agreed with this line of reasoning—I still do—and thought it stated the case adequately. However, further study and reflection have led me to a somewhat different conclusion. Property rights are not just another human right; such a statement understates the case. They are much more fundamental than that. Property rights are basic to all rights.

This relationship first occurred to me while studying the loss of rights in totalitarian countries. My general conclusion was that the loss of property rights either preceded or accompanied the loss of other rights. This was so in Hitler's Germany. It was so in Lenin's and Stalin's Russia. It has also been the case in other totalitarian countries. It is possible that some property rights could be retained while other rights, such as freedom of speech, freedom of press, freedom of religion, freedom of association and so on, would be severely curtailed or taken away. But it is now inconceivable to me that other rights could be maintained when property rights were gone.

This suggests to me that there is a causal connection between property and other rights. The historical connection can be seen not only in countries where rights have been lost but also in countries where they were being established. For example, in England in the seventeenth and eighteenth centuries, real property was being made private and personal. At the same time, there was a movement for substantial freedom of religion. In the wake of the establishment of these came the protection of other rights.

Freedom Is Indivisible

To my knowledge, no general theory has been propounded on the connection between property and other rights. True, the position has been often stated, sometimes accompanied by proofs or arguments, that freedom is indivisible. The meaning of the phrase is that you cannot pick and choose among basic liberties; you must buy the whole package or end up with none. There have also been assertions made that rights such as freedom of press are dependent upon private property. If there is no access to a printing press, the freedom to publish is empty.

Here and there, too, statements can be found which imply the central role of property. For example, here is one from John Stuart Mill:

> . . . If the roads, the railways, the banks, the insurance offices, the great joint stock companies, the universities, and the public charities, were all of them branches of the government; if, in addition, the municipal corporations and local boards, with all that now devolves on them, became departments of the cen-

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tral administration; if the employees of all these different enterprises were appointed and paid by the government, and looked to the government for every rise in life; not all the freedom of the press and popular constitution of the legislature would make this country free otherwise than in name.[2]

While Mill here entangled the matter with distribution of power among governments, it is reasonably clear that private property is a key factor in his position.

Natural Rights

In general, though, little attention has been paid to the relationship among rights. The Founders of the United States tended to equate them, trace them to the same source, and worked to establish those they recognized as important rights. They were particularly concerned with those that government has been given to invading and violating. For example, Thomas Jefferson said: "There are rights which it is useless to surrender to the government and which governments have yet always been found to invade. These are the rights of thinking and publishing our thoughts by speaking or writing; the right of free commerce; the right to personal freedom."[3] They relied upon a received theory rather than propounding new ones.

They commonly referred to those rights which they accepted as natural rights. They were understood to be a gift of God, implanted in the nature of things. As Alexander Hamilton put it, "the Deity, from the relations we stand in to Himself and to each other, has constituted an eternal and immutable law. . . . Upon this law depend the natural rights of mankind. . . ."[4] There were those who held that these rights were altered when man entered into society. The Founders did not concur in this view. Jefferson said that "the idea is unfounded that on entering into society we give up any natural right."[5] Hamilton declared that "Civil liberty is only natural liberty modified and secured by the sanctions of civil society."[6]

What are these natural rights? John Adams stated it this way in the Massachusetts Declaration of Rights:

> All men are born free and *independent,* and have certain natural, essential, and unalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.[7]

Jefferson said: "I believe . . . that a right to property is founded in our natural wants, in the means with which we are endowed to satisfy these wants, and the right to what we acquire by those means without violating the similar rights of other sensible beings; that no one has a right to obstruct another exercising

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his faculties innocently for the relief of sensibilities made a part of his nature. . . ."[8] The United States Constitution along with the first ten amendments, and state constitutions of the time, provide a more complete list of what were reckoned to be the most essential rights, or the ones most likely to be interfered with. Certainly, the right to property was reckoned to be essential, as the above statements show, but the dependence of other rights on it was not made clear or elaborated.

The Socialist Concept of Rights

It was not many decades, however, before the natural rights doctrine was challenged and began to be supplanted. The utilitarians turned away from the natural law basis of rights to justifying them by the social benefits to be derived from them. Democratic theory tacitly derived rights from the desires of the people. Socialists generally denied that there was any individual right to property, at least to productive property. Democratic socialism, which became the dominant intellectual creed of the twentieth century, not only downgraded, when it did not dismiss, private property rights but also devised a host of new rights. Many of these were in conflict with the right to private property.

Perhaps, the United Nations Declaration of Human Rights is the most authoritative compendium of rights to come from the democratic socialist outlook. If it is not the most authoritative, it is surely the most complete. The Declaration runs to 29 articles, and many of these have several subheads, which may be thought of as distinct rights. If so, we may be entitled to something like 49 rights according to this document. The right to own property is mentioned in Article 17, but no reference is made either to the right to use it or to have the fruits from it. That is understandable within the context, for many of the other rights enumerated are adverse to property rights. However, many of the rights are not only in conflict with property rights but also internally inconsistent. For example, Article 26, which deals with education declares that "Elementary education shall be compulsory." It goes on to say, however, that "Parents have a prior right to choose the kind of education that shall be given to their children."[9] They have the right to choose, we are left to conclude, so long as they choose to have them receive an "elementary education."

This brief summary of the development of ideas about rights does not begin to suggest the significance of the changes entailed. The origin of rights had shifted from natural law to society, to people, and, inevitably, to government. This development not only focused attention on

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the origin of rights but also introduced ideas about what are rights. In the course of it, thinking shifted farther and farther away from any conception of the property basis of rights. It will be my contention here that this almost totally obscured the means for establishing any rights.

It is necessary, then, to explore the property basis of rights. A good place to begin is with a definition of right. A right is something to which one is entitled by virtue of being a man (generically). Whether it be called a natural right or a human right, it must be in accord with the nature of man and the human condition. Consistency requires, too, that one man's right not diminish the rights of others. In the final analysis, a right is what is right and derives its standing from the standard of justice. It is doubtful that a complete list of rights could be contrived, for right comes down ultimately to equity, to a law deeper and broader than the acts of legislatures and the precedents made by the courts. Right is a matter of principle, and like all principles, it is capable of numerous applications.

With that in mind, then, the relationship between property and rights can now be explored. The property basis of individual rights has at least two dimensions. One is conceptual. The other is in the effective ability to exercise rights.

Conceptually, all rights are either *elaborations* or *extensions* of property rights. For example, in the United States a person has the right to order the disposition of his bodily remains after death, by will. The right to one's body is an elaboration of property rights; indeed, it may be the most basic property right. A will is written to dispose of one's property. Hence, the right to order by will what disposition shall be made of the body is an extension of the process.

Property Undergirds Rights

Many rights are so closely tied to property rights that they are virtually indistinguishable from them. For example, the right to buy and sell or, more broadly, to trade freely, is a property right. It is an aspect of the ownership of property. Free speech and a free press are fundamentally property rights. We probably do not ordinarily think of them that way, because we think of them as something asserted when there is an attempt to interfere with them. Such a view treats of the exception rather than the rule, and tends to mislead us as to their character.

Speaking and other forms of publication are valuable and valued means of conveying information. They are, if you will, items of commerce. That is, many people are paid and even make a living from speaking, writing, and other forms of publication. That is, others want, and

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will pay for, the information they have to convey. Teachers, preachers, public speakers, journalists, commentators, advertising men, and so on, come readily to mind. Speech is a property right in the market; others may not reproduce it without permission and can benefit from it ordinarily only by paying the price for it. Literature is a property, vouchsafed by copyright law.

The value of communication is in direct proportion to its accuracy, validity, and truthfulness. To put it negatively, an utterance obtained by compulsion, by twisting the arm, for example, has value only for a masochist. On the other hand, if one is prevented from speaking the truth as he understands it by fear of compulsion, the value of his communication is diminished thereby. Free speech and a free press are the necessary conditions for securing the property values in these, both for speakers and for hearers.

Individual Rights Are Extensions of Property Rights

There is probably no way of conceiving of individual rights other than as either property rights or extensions of property rights. Our right to life stems from the fact that it is our *own* (and only) life. Our right to the disposal of our time stems from the fact that it is our *own* time. Our right to the use of our faculties stems from the fact that they are our *own*. Remove from them the concept of private property and the claim to them goes as well.

The concept of property is not, of course, peculiar to our age. It has probably been around approximately as long as man, and even the lower animals appear to have an instinct for it, if they cannot actually conceive it. Actually, there have been many conceptions of property. Some societies have conceived of property rights in other persons, and have established slavery. Others have conceived of property rights in the services of others, and have established serfdom. Some have so dispersed property rights that hardly anyone could be said to own anything. We appear to be bent on a course in that direction today. Property rights in some societies have been assigned to various classes. It is interesting to note in all these cases that all other rights, to the extent that they were recognized, tended to be parceled out in much the same way as property rights.

This suggests to me that our conception of rights in general is tied to our conception of property. More specifically, as I have said, it suggests that our conception of individual rights is dependent upon a conception of private property. The reason for this, I believe, is that all rights are either property rights or extensions of them. It might be possible to establish what we think of

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as rights to private property without establishing what we have thought of as other rights. But it is greatly to be doubted that the "other rights" could be established in the absence of rights in private property. That, as I understand it, is much like saying it would be possible to lay a foundation without building a house upon it, but one could hardly expect a roof to stand without walls to hold it up.

How Rights Are Exercised

There is another reason for this connection. Private property is essential to the *exercise* of individual rights. To turn it around, in the absence of private property, the exercise of whatever may be proclaimed as rights will be dependent upon who controls the property.

This latter principle has been well illustrated in the Soviet Union in the matter of religion. The Soviet Constitution proclaims the right to the free exercise of religion. It is very nearly an empty right, however, because churches do not have the private property to facilitate its free exercise. All schools are governmentally owned and run, and religion may not be taught in them. Most seminaries were closed and much of church property confiscated in the wake of the Revolution. (The Kremlin, once the seat of Russian Orthodoxy, now houses the government.) There is a shortage both of clergymen and of church buildings. Missionary efforts are severely circumscribed. Since productive equipment cannot be privately owned, the churches are entirely dependent upon a hostile government for Bibles, musical instruments, prayer books, song books, and other religious paraphernalia. The exercise of religion is clearly a privilege, when it can be done, not a right, in the absence of private property.

The same principle has been illustrated in American schools in recent years on a much smaller scale. The First Amendment to the United States Constitution declares, in part, that "Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise* thereof. . . ." (Italics added.) The Supreme Court has prohibited various religious exercises in the public schools. These prohibitions rely upon the fact (or premise) that the public schools are governmentally owned and operated. The courts have said, in effect, that we may freely exercise our religion on private property, but not on that which is governmentally owned. Its exercise in the public schools was a privilege which has now been withdrawn.

But the exercise of any right requires the use of property. Without real property, there is no place to stand, sit, lie, walk, ride, or do anything. The making of a speech re-

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quires a platform from which to speak, as it were. The publication of a book requires a printing press, of course, but much more besides. There must be a desk at which to sit or stand, pen with which to write, paper on which to write, boxes in which to place the manuscript, printing ink and paper, a store in which to display the book, and money with which to buy it. Freedom of assembly requires for its exercise a place within which to assemble. The right to the use of one's faculties depends upon property on which to use them.

It is true that property often serves an humble and unobtrusive role in the affairs of men. Frequently, it has only a subordinate part to play. Most of us would agree, I think, that the soup is more important than the pot in which it is cooked, the speech more important than the platform from which it is delivered, the sermon more important than the pulpit, the painting more important than the canvas, the words more important than the paper on which they are printed, and the man more important than the ground on which he treads. From such evaluations, we may conclude that property should be downgraded, that if there is a right to it, it should be a right made subordinate to all others.

We are apt to do much more than ignore the obvious when we think in this way. The obvious is that without the container we can make no soup, without a place to stand there can be no speech, without a canvas (or other receptacle) there can be no painting, without the paper the words cannot be assembled, and without the ground the man has no place to walk.

Use Subordinates Property

We ignore something more subtle and possibly more profound than this. We ignore the fact that it is the cook who subordinates the pot with his soup, that it is the preacher who subordinates the pulpit with his sermon, that it is the artist who subordinates the canvas with his painting, that it is the writer who subordinates the paper with his composition, and that it is the man who subordinates the ground by walking upon it. Every use by man of property is a subordination of it. When a house is built upon land the land is subordinated to that purpose. The farmer who clears, plants and tills the soil subordinates it to his purpose.

From these and other considerations, including a mass of historical evidence, I conclude that government as a mechanism cannot act to subordinate or downgrade the importance of property. Government as lawmaker is a mechanism. All direct efforts by government to place property in a subordinate place will

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tend to have the opposite effects. Let us take the extreme case for illustrative purposes. Suppose that government confiscates all property, or as much of it as is possible. This will magnify the importance of property rather than reduce it.

Property Insecure when Government Intervenes

The reason for this should be apparent. Man's necessity for property is absolute; his survival and all activities depend upon it. When government has control of it all, man's concern with it becomes preponderant, for his access to it is no longer secure. Not only does it magnify the importance of property but also of government. Total control over all property becomes the means for total control over men. The law which disposes property in this situation also disposes men. Indeed, the wedding of property to government turns the control over things into control over men. What may start out as an effort to subordinate property ends up as the subordination of man.

There are those who suppose that a government which has taken away the right to any significant private ownership of property could, nonetheless, confer a variety of individual rights upon the people. Indeed, there are many Westerners who believe that the Soviet Union, for example, could confer freedom of speech, freedom of the press, and freedom of religion, say, on the people within its bounds. It could not do so and retain its control over all property. Above all, it could not establish these freedoms as rights.

The most that a government could do would be to lay down rules for access to property. To call such access a right, however, is a misnomer; it can at most be only a privilege, revocable at will, and available at the behest of those who have the power. In any case, in the absence of property, there are no means for contending with government. It is of little avail to have money in the bank, if the government owns the bank and can confiscate the funds of those who may choose to oppose it.

The Rules of the System

Government cannot create rights. It can recognize them. It can provide a legal system within which rights can be defended. It can come to the aid of those whose rights are threatened. The property basis of rights indicates yet another role government can play, and it is a crucial role. Government can establish what property system will prevail among a people. It can determine who may own it, the extent to which it may be owned, whether and how it may be bequeathed, and so on. By the system it establishes for property, it will largely determine also what, if any, rights there can be,

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who may enjoy them, and the distribution of them. For example, if it establishes a class system of property control, as there was in Medieval Europe, it can only establish rights as belonging to classes. If it establishes bureaucratic control over property, then such rights as there may be will belong mainly to the bureaucrats.

There may be a natural right to the private ownership of property. I believe there is. It arises in this way. A person who uses his own materials, his energy and ingenuity, and his tools, to construct something is the rightful owner of it. It follows, too, that a person who contributes any of these elements to make some article of use owns that portion of it appropriate to his contribution. (That he may have agreed to the disposal of his interest for a consideration is but an elaboration of the principle.) Nor do I doubt that the private ownership of land is the most effective means of securing their other property to owners, though the right to land does not arise naturally.

My main point here, however, is somewhat different from this. It is that there is something like a natural law of relationships between property and other rights. This law has nothing to do with the relative value we may assign to various rights. Nor can it be altered by any determination of ours as to what rights should have preeminence. The law is not causal in nature; rather, it is consequential. That is, the law does not cause us to adopt any particular course of action, but it does determine the effects once the direction has been taken. Indeed, that is my understanding of all natural law as it applies to man.

All Rights Depend on Property

The law may be stated in this way. All rights are dependent upon property. They are dependent upon property for their conception, their delineation, and their exercise. It follows from this that the system of property ownership will determine what rights can be effectively established within a society. Since a right cannot be firmly established unless it is tied to a property base, changes in the property system will tend to be reflected in the rights that can be exercised. And, the right of the individual to the ownership of private property is essential to the establishment of individual rights.

Even those asserted rights which are in reality government privileges masquerading as rights depend on property. For example, the United Nations Declaration of Human Rights asserts that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary so-

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cial services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control."[10]

Food, clothing, shelter, medical care, and so on are certainly property. Thus, the "rights" named depend on property for their exercise. In these cases, however, it is the property of others that is involved rather than that of the claimants. If governments establish these "rights" they must fulfill the claims by confiscating the property of those who possess it and conferring it upon the claimants. That such action is an assault upon private property there should be no doubt. That governments which simultaneously assert the right to private property and then confiscate it to fulfill other rights have adopted contrary principles there should be no doubt. Their assertions of "rights" are in conflict with each other. But my main point is that anything which is established as a right depends on property.

The Vital Link

All attempts to exorcise property from rights and privileges, then, are in vain. Any claim to a right or privilege is, in some sense, a claim to property. It is possible, of course, to downgrade private property. But in the process, individual rights are unavoidably undercut. By analysis, we can distinguish various sorts of property, i.e., real property, chattels, tangible and intangible, productive and personal. In like manner, we can distinguish a great variety of rights by analysis. Analysis is a great aid to precise thought, but that which can be arrived at by analysis should not be confused with the reality from which it is drawn. Property and rights are inseparable in reality because of the property basis of rights.

—FOOTNOTES—

[1]Quoted in Sylvester Petro, *Power Unlimited* (New York: Ronald Press, 1959), p. 100.

[2]John Stuart Mill, *On Liberty*, Alburey Castell, ed. (Northbrook, Illinois: AHM Publishing Corp., 1947), pp. 112-13.

[3]Edward Dumbauld, ed., *The Political Writings of Thomas Jefferson* (New York: Liberal Arts Press, 1955), p. 57.

[4]Richard B. Morris, ed., *Alexander Hamilton and the Founding of the Nation* (New York: Dial Press, 1957), p. 9.

[5]Dumbauld, *op. cit.*, p. 55.

[6]Morris, *op. cit.*, p. 13.

[7]George A. Peek, Jr., ed., *The Political Writings of John Adams* (New York: Liberal Arts Press, 1954), p. 96.

[8]Dumbauld, *op. cit.*, p. 49.

[9]Henry S. Commager, ed., *Documents of American History*, II (New York: Appleton-Century-Crofts, 1962), 553.

[10]*Ibid.*

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Charles R. La Dow

COMPETITION

COMPETITION occurs when one strives to do better, qualitatively or quantitatively, something which others are doing. It also happens when one provides a unique good, or service, or one which provides an acceptable substitute for a going thing. Since many risks are inherent in any endeavor, and no one can predict, with certainty, what resources will be required to bring it to a successful conclusion, the individual (personal or corporate) is justified in charging for his efforts all the market will bear. His customers will tell him soon enough if he is charging too much either by trading elsewhere, or doing without his product. There is no competition where everyone wins.

To the consumer, there are no indispensable goods excepting air, water, and minimal living space. The former two are free goods, excepting the cost of storage and delivery of the water. Basic living space has never been an issue in civilized societies outside the rarity of banishment. As for all the rest, including food and shelter, the options are too manifold to permit anything being called indispensable. This marks the ultimate power of the consumer and assures us that the producer, or entrepreneur, can never take advantage of him.

When competition for the favor of the consumer has created the immense variety of goods and services now available in our society, the simplicity of this process becomes obscure. Pundits, intellectuals, politicians, and those who are low in the competitive scale are spurred by envy of this cornucopia of material wealth. They find rationalization for their envy in such ideologies as

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Marxism, or "Christian Socialism." Ignoring the evident reality that there is less disparity between our richest and our poorest citizens than in any other past or present society, they make ever-increasing demands for redistribution of national income by political force. War is being waged on the miracle of competition. They are trying to "kill the goose that laid the golden egg."

Conspiracy?

The chief gambit in this war on competition is the charge of conspiracy. Big business, so the claim goes, is conspiring to gobble up the small firm and bilk the consumer. Conspiracy is one of the most difficult indictments either to prove or disprove, but especially difficult to disprove when envy is the majority witness. After all, corporate executives do talk to one another and do direct their policies, including prices, with some regard to what they learn from one another, as well as from consumers. There are also interlocking directorates and a good deal of mobility of executives between corporations. (There appears to be no oversupply of executive talent and experience.) So, charges of the existence of an "inner circle" in any industry are easy to believe in the light of envy.

However, a fair and general observation informs us that such appearance of collusion exists in human affairs at all levels. The non-pejorative word for it is cooperation. And, the peculiar thing about it is that those who are most adamantly opposed to "corporate conspiracy" are the most enthusiastic adherents of cooperation. Indeed, the centerpiece of Franklin D. Roosevelt's New Deal was industry-wide collusion and blatant price fixing. While the Supreme Court declared the NRA vehicle of that policy unconstitutional (one conservative decision in this era which has stood), its spirit still lives among the "liberal" Democrats. It is quite clear that they have no real objection to conspiracy—as long as they direct it. Their tacit excuse, even sometimes explicit, is that their motives are pure, while those of corporate tycoons are rather uniformly suspect, if not downright venal. For most of this century, their intellectual apologists, from Lincoln Steffens to John Galbraith, have been able to peddle this conception of affairs to the constituency of envy.

Blaming the Advertiser

A companion scapegoat to corporate conspiracy has been advertising. The liberal claim that advertising is corrupting the public taste, endangering the public health, and impoverishing the common people also calls for inspection. As for health and longevity, they have improved throughout our history, most

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especially recently. It is only fair to suppose that advertising is more an answer to public taste than its cause.

It is also fair to ask what liberal intellectuals have contributed to the improvement of public taste. It seems reasonably obvious that General Motors, General Electric, American Tobacco, and others have had little impact on the taste for bad art and literature and trivial education which are the foundations of consumer choice. On the other hand, liberals seem to be at the forefront of every movement toward the elimination of discriminative taste, just as they have led in the trivialization, even vulgarization, of the school curricula.

On the broader view, the case against advertising in general would seem to be as dubious as that against corporate conspiracy. Unbiased observation suggests that advertising is much more the caterer to public taste than its creator. In any event, corporate advertising power is more than matched by that of its detractors, who have gained support of the Food and Drug Administration, E.P.A., and the Surgeon General, among many others too numerous to mention.

Indeed, governmental meddling with competition, including discriminative antitrust suits, render corporate intrigue much more likely to occur, if not downright necessary. If the great firms do not combine "in restraint of government," it is not at all impossible that they will eventually lose the opportunity to compete. Such an eventuality certainly lurks in the plans of Ralph Nader, as well as in the Galbraithian critique, which would make them kennel dogs of the state.

When the efforts of Common Cause to deny corporate use of funds in political self-defense through lobbying and political contributions, the politicized clout of Big Labor, and support of their enemies by the American Civil Liberties Union are taken into consideration, survival of competitive Big Business does seem in question. Long-term corporate obeisance to, if not connivance in, creeping inflation further mars the fighting chance for competition's survival, for it has conceded the ultimate (money) power to the politicians.

Government Involvement

Finally, if we wish to be honest about it, we must recognize that there is now only one viable source of genuine conspiracy in restraint of trade: that to be found in our governments, federal, state, and local. For, aided by the blight of "revenue sharing," teeming bureaucracy has now nosed into the smallest hamlet in the land.

Regional agencies of every kind abound in frustration of competi-

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tion. Combined with inflation, they have all but brought construction to a standstill, effectively throttling competition in the housing industry. Auto builders seem headed toward a similar slump, with other industries expected to follow. The signs of "recession" are generally faced with acceptance that the economy needs "cooling down" and consumers will restrict spending. High interest rates, credit controls, a slight fiat money squeeze, and a token balancing of the budget are expected to halt inflation. An "excess profits tax" on the oil companies has been added to this assault on competition. With this on top of at least 42 per cent of the nation's product falling into the control of government, it is difficult to imagine how competition can be strengthened.

Healthy competition, combined with honest private cooperation will only be revived when government is forced to relinquish its monopoly of conspiracy in restraint of trade and is made to concentrate upon its basic duty marked by common and statutory law, as prescribed by the Constitution, and the maintenance of domestic peace, security, and the furtherance of peaceful commerce among nations.

As in England and elsewhere, the state has run the course in attempting to manage private competition and has proved its utter incompetence to assume that task. Neglecting its constitutional duties, our federal government has saddled its people with perennial national debt, misappropriated private property (both by inflation and by exorbitant taxation) in the unconstitutional transfer of wealth, overregulated all private activities, and made a shambles of our relations with the rest of the world.

The list of grievances against George III, in the Declaration of Independence, reads like a catalogue of the vices which our own government now perpetrates upon us. No revolution is now called for because the proper documents are all still in place. All we need to do is put into office men who understand, and will abide by, the "highest law in the land." The proper business of all genuine intellectuals is to educate the populace to that end.

IDEAS ON LIBERTY

Trade

THERE is nothing so useful to man in general, nor so beneficial to particular societies and individuals, as trade. This is the alma mater, at whose plentiful breast all mankind are nourished.

HENRY FIELDING

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Arthur Shenfield

LAW LEGISLATION AND LIBERTY: Hayek's Completed Trilogy

In 1973 Professor Hayek published the first volume, under the heading *Rules and Order,* of a trilogy entitled *Law, Legislation and Liberty.* Its place in the long development of his thought in the field of legal and political theory was examined in "The New Thought of F. A. Hayek" (*Modern Age,* Winter 1976), which offered the observation: "If we may judge from the standard established by the first volume, the scholarly world can await a feast of analysis and argument of masterly vigor and profundity. The whole three-part work will surely be a landmark in the development of fundamental political and legal philosophy."

The trilogy has now been completed. The second volume, *The Mirage of Social Justice,* was published not long after the first, but the world had to wait until May 1979 for the appearance of the third, *The Political Order of a Free People.* It is now possible to see whether the high expectations aroused by the first volume have been fulfilled.

The Mirage of Social Justice opens with an examination of the rules governing the spontaneous order or cosmos, which was presented as the order of the free society in the first volume of the trilogy. The rules, we are told, are a device for coping with our inevitable ignorance of more

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than a small part of our relationships with other persons in the Great Society.

If we were omniscient, there would be little need for general rules, for we could then deal with each other in the *ad hoc* way which we normally apply within our small families. Here Hayek rests his analysis on what has been for many years the rock bottom of his most profound work, namely the role of knowledge, or more importantly the absence thereof, in human relationships. It is because freedom's famous but too often misunderstood "invisible hand" enables us to produce a system despite the narrow limits of our knowledge, that the free society is so superior to all unfree societies, which need a degree of knowledge beyond the capacity of man to encompass. This is not a matter only of economic relationships. It extends to all the relationships which make up the spontaneous order of the Great Society.

The Spontaneous Order

The rules of a spontaneous order are abstract, normally negative in character, and long-term in application. Thus the commandment "thou shalt not steal" names no specific article or person of which or from whom there is to be no theft, lays down only a negative, not a positive, duty in relation to other people's property, and has a timeless horizon. By contrast the rules of a made order are concrete, positive, and subject to frequent change. Hence there arises the fundamental difference between the functions of a judge or lawgiver and those of an administrator.

What is the relation between the rules of a spontaneous order and justice? In the first volume of his trilogy Hayek lingered for a considerable time on the nature of law, but here he takes it further in an onslaught on the doctrines of legal positivism, namely that all law is the expression of the will of a legislator, and that justice has no meaning other than the prescription of such law. From Hobbes, Bentham, and Austin to Kelsen these doctrines have had a powerful influence, all the more because they have been expounded by scholars of very high eminence.

Hayek is not the first to criticize these doctrines, but his insight into the difference between a spontaneous and a made order gives his criticism a thrust which is especially his own. Thus he says (page 46): "It is evident that so far as legal rules of just conduct, and particularly the private law, are concerned, the assertion of legal positivism that their content is always an expression of the will of the legislator is simply false. This has been shown again and again by the historians of private law and especially of the

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common law. It is necessarily true only of those rules of organization which constitute the public law; and it is significant that nearly all the leading modern legal positivists have been public lawyers and in addition usually socialists—organization men, that is, who can think of order only as organization, and on whom the whole demonstration of the eighteenth century thinkers that rules of just conduct can lead to the formation of a spontaneous order seems to have been lost."

And (page 53): "Legal positivism is in this respect simply the ideology of socialism and of the omnipotence of the legislative power"; and further (page 55): "It was the prevalence of positivism which made the guardians of the law defenseless against the new advance of arbitrary government."

Hayek's lengthy and painstaking analysis of legal positivism ranks with the most profound work which he has ever produced, and by itself would make this volume of his trilogy an outstanding achievement. But it is only an introduction to the volume's central argument.

Social Justice a Mirage of Envy and Hatred

Who can be just or unjust?, asks Hayek. Only human beings acting purposively. Hence individuals can be just, groups acting as groups can be just, governments can be just. But society cannot. For society is an abstract or spontaneous order, not a purposive group. Social or distributive justice is meaningless in a spontaneous order (a cosmos); it can have meaning only in an organization (a taxis). Hence the idea of social justice is a mirage. It is well known that in practice it turns out to be institutionalized envy and hatred. But it is worse than that, for it is built on ideological sand. As between men justice and injustice have meaning only when it is men who do right or wrong.

We all understand that it makes no sense to talk of human injustice if a volcano or lightning kills one man and not another, if it rains gently on one farmer but destructively or not at all on another, or if some are born clever and others stupid, for no man was responsible for fortune or misfortune in these cases. We also understand that if a virtuous woman whose price is beyond rubies chooses to marry one man and not another, the latter cannot claim to be the victim of injustice, even though here purposive human action is the cause of his discomfiture; for no man has a right to command the affections of any woman, and the woman in this case has done no injustice in exercising her choice. We may even understand that it is not injustice if some are born with the cultural heritage of an Eskimo and others with that of a European, though here again

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chains of human action are behind the difference.

But when we see one man to be richer than another, with no discernible moral superiority or perhaps with a clear moral inferiority, many of us easily succumb to the seductive notion that injustice must be at work. Hence those who talk of social justice can persuasively declare in such a case that success (except their own) is due to injustice, and that therefore they must take by force from the more successful to give to the less successful (as long as the latter are their clients). In practice, as we shall see below, they only promise to give to the less successful. Once they have the power so to do, what they do turns out to be somewhat different.

Voluntary Exchange

In the spontaneous order of freedom, the best society known to us, income or wealth arises from payment freely agreed and given by those whose wants are satisfied to those who satisfy them. Hence differences in income or wealth have no relation to merit unconnected with the satisfaction of human wants. Saints and sinners may reap their just rewards in a future life, and they may perhaps get some spiritual rewards in this life, but their material rewards can only be determined by the value which others, free from compulsion, put upon their services. In some fields this is or used to be well understood.

By all accounts the late Babe Ruth was a man of odious personal character, but the fans made him rich because they prized not his personal merits but his ability with a baseball bat. Henry Ford was a pitiable ignoramus outside engineering and industrial management, and not very pleasant a man; but the people, acting without compulsion, made him a multimillionaire not for his moral or intellectual qualities but for his ability to put them on wheels at an unprecedentedly low cost. Nowadays the Babe Ruth case continues to be understood; thus rich sportsmen and entertainers are generally exempt from assault by champions of social justice. But the Henry Ford case has changed. Now his wealth would be assailed as unjust even if he were a saint or an intellectual titan as well as a marvellous producer of wealth.

Payment for Service

We still understand that surgeons must pass examinations before they can be certified competent to operate upon us, and that it is just to pay surgeons for their competence in surgery, not for any other merit or any need which they may have. A surgeon of mediocre skill who is known to be a saint or to have numerous children to support would not receive payment from us on the

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scale of one of high skill, and in this we do not think that we act unjustly. But too few of us understand that where men are free, they conduct similarly just examinations every moment of the day as they decide whom to reward for the service of their wants, and whom not to reward.

This principle is sometimes misunderstood even by supporters of free enterprise. In the Samuel Smiles and Horatio Alger type of exposition, there is a tendency to stress the moral qualities of materially successful men, giving the impression that it is these qualities which we reward. Of course the man who makes two blades of grass grow where there was formerly one, or the man who makes a better mousetrap, may be led to do so by his high moral qualities, but he receives his just payment for the abundance of the grass or the quality of the mousetrap and for nothing else. Sometimes his achievement is justified on the ground that it has social value or a value to society. However there is no such thing as a value to society, except the value of its rules. Goods and services can have value only to persons, or to groups of persons acting as a group. Society does not so act.

It is common at this point to argue that wealth differences may be justified by personal success in the satisfaction of wants, but that the inheritance of wealth cannot be justified since the legatee satisfies no wants. Many supporters of the rights of private property have needlessly agonized about this. In a free society the state has no part in the transactions which put the property in the hands of the testator except that of guardian of the rules, and the state has no more *locus standi* to take it out of the hands of the legatee (except for its taxing power which has a quite different basis) than any other bystander. That it may tax the legatee does not mean that his inheritance belongs to it, any more than its power to tax incomes means that it owns the incomes. When the state claims the right to deprive the legatee of his inheritance, apart from the taxing power exercised for other purposes, it does so on the false pretense that it is itself the society or is in some manner clothed with the rights of society, which is the essential claim of the totalitarian state.

An Unattainable Goal

The mirage of social justice beckons men to the unattainable goal of substantive equality. Though the goal is unattainable, the pursuit of it is one of the most corrosive of all human influences. It not only produces envy and hatred. It also drives men into submission to tyranny, for only tyranny can plausibly offer to reach the unattainable goal; and

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with tyranny there also comes poverty. Thus are lost the blessings which men came upon when almost inadvertently they constructed the Great Society.

Hayek expounds the nature and consequences of the pursuit of substantive equality with his customary insight, thoroughness, and felicity. For many it will be almost equally important that he also explodes the concept of the alternative which is commonly called equality of opportunity. If by this is meant *la carrière ouverte aux talents,* it is unexceptionable, but that is not equality of opportunity. If equality of opportunity is truly meant, it is as unattainable as substantive equality and its pursuit is almost as destructive as that of the latter.[1] The only form of equality consistent with the rules of the free society is equality before the law.

Roots of Protectionism

A most important aspect of the pursuit of substantive equality is that, since genuine equality of condition is highly repugnant to almost everyone and extremely difficult to define or even conceive, right from the beginning the self-styled champions of substantive equality pursue something else. In its more obviously odious form it is the desire to pull down certain selected groups who are declared to be immorally rich but who often are neither rich nor immoral. In its less obviously odious form, which is indeed widely approved by men of goodwill, it is the protection of accustomed or established positions. This is so obviously different from equality that it is only the remarkable perversity which is so often found among ideologues and their political pupils that enables the one to be sought under the banner of the other.

Few persons command so ready a sympathy as those who, without apparent fault, lose their jobs because those who have bought their produce now decide to buy from some cheaper source, especially if that source is foreign. Since Hume, Smith, and Ricardo, economists have always understood the folly of allowing this sympathy to propel us into protectionism, and of course Hayek knows all about this. Here however he goes deeper than the exposition of mere economic folly. He demonstrates with a full and acute analysis that the protection of established positions strikes at the heart of the spontaneous order, and all the more once that order has expanded into the Great Society.

A False Appeal

Thus we come to Hayek's conclusion on social justice. It is a *cri de coeur* from a scholar who has spent a lifetime watching the corrosive effect of this slogan upon many minds which might have been expected to

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perceive its true character (page 97): "What I hope to have made clear is that the phrase 'social justice' is not . . . an innocent expression of goodwill towards the less fortunate, but has become a dishonest insinuation that one ought to agree to a demand of some special interest which can give no real reason for it. If political discussion is to become honest it is necessary that people should recognize that the term is intellectually disreputable, the mark of demagogy or cheap journalism which responsible thinkers ought to be ashamed to use because, once its vacuity is recognized, its use is dishonest. I may, as a result of long endeavors to trace the destructive effect which the invocation of 'social justice' has had on our moral sensitivity, and of again and again finding even eminent thinkers thoughtlessly using the phrase, have become unduly allergic to it, but I have come to feel strongly that the greatest service I can still render to my fellow men would be that I could make the speakers and writers among them thoroughly ashamed ever again to employ the term 'social justice.' "

If the cry of "social justice" does cease to be heard in the land, no man in all the history of political and legal philosophy will have done more to produce that devoutly desirable consummation than Hayek.

Let us now pass to the third volume of the trilogy, "The Political Order of a Free People." In the first two volumes Hayek laid a foundation for a program for the renovation of the once-liberal, once-successful, but now sadly crumbling, Western political order. In the third volume the program is set out in much detail and with a full envelope of argument.

However, though this program is in an important sense the culmination of Hayek's thought on the problems of society, it did not arise in his mind as a late flowering of his analysis of law, order, and justice in society.

A New Political Order

There is no surprise in finding that all Hayek's ideas are the product of a long, slow development in his mind, so that they display the rich maturity to be expected from years of thought and experience, of examination and re-examination, of testing and re-testing. Thus those who have followed the development of Hayek's work will already be familiar with the essentials of his proposals for a new political order. He first presented them in a brief discourse to the Mont Pelerin Society at Vichy in 1967. He offered them in more developed form in 1973 in his "Economic Freedom and Representative Government."[2] In this volume he presents them in what is perhaps their finished form, though it will not be open to us to think of any of

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Hayek's ideas as having reached their ultimate form until he lays down his pen once and for all.

Why is the Western political order crumbling about our ears? And why do we need to devise fundamentally new political machinery to preserve such freedom as we have, restore the freedom we have lost, and give all our freedoms the protection of a stable order? Because, Hayek argues, we have failed to distinguish between nomos and thesis, between the rules of just conduct and the orders required for the tasks of government, between legislation in the true sense and administration.[3] We entrust the same body, Parliament, Congress, National Assembly, etc. with the task of deliberating upon and determining both nomos and thesis. From this, in Hayek's view, the degeneration of modern democracy has developed.

From Democracy to Dictatorship

The degeneration of democracy into plebiscitary dictatorship and perhaps ultimately into totalitarian tyranny proceeds visibly before our eyes, but we are powerless to arrest it, Hayek tells us, as long as, while still prizing the principle of democracy, we think that existing democratic forms are the only forms. For it is by these very forms that we are betrayed.

We are surely right to prize the principle of democracy. A system in which government is responsible and accountable to the governed offers the best chance for liberty under law, for peaceful political change and peaceful rivalry for office or power that mankind has known. Yet if it be the case that existing democratic forms are a mechanism for the decay of democracy, the time will come, and perhaps soon even in the apparent citadels of democracy of the North Atlantic, when the people will abjure democracy. For as it decays, mounting disorder will arise in which even democrats will come to believe that only the agonizing choice between authoritarian and totalitarian government remains open to them. Fortunate will be those who then get an authoritarian Franco, Salazar or Pinochet rather than their alternatives.

Yet the authoritarian dictator fails to produce a durable system. His system tends to last no longer than he himself. Where has there been a better dictatorship in modern times, if dictatorship people must have, than the *"ditadura sem ditador"* (dictatorship without a dictator) of Salazar? How many rulers have given the Spanish people as long a period of peace and prosperity as did Franco? Yet Salazar and Franco were not long in their graves before their peoples dismantled the systems which they had so laboriously constructed. The lesson is clear. If democracy can be saved,

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there can be no higher political duty than to save it.[4]

Special Interests Gain Power

The process of democratic degeneration displays itself as the general interest becomes subordinated to various sectional group interests, so that the legislature ceases to be a forum for the determination of the general interest (for which the rules of just conduct are the basis), but becomes an arena in which special interests jostle and bargain with each other for the favors of the state. The democratic process thus comes to betray not only the general interest but majority rule itself. It is not the wishes, still less the interests, of the majority which prevail, but the desires of fluctuating coalitions of minorities.

Each group in the coalition bargains with other groups so that each may feed at the public trough, and the rapacity of each is thus constrained not by any attention to, or concept of, the commonweal but by the need to accommodate itself to the rapacity of the others. However, such a system is unstable. It is not merely that its true nature cannot be concealed from the people, however adept at camouflage by way of democratic slogans and mob flattery the coalition leaders may be.

What must bring it down and in due course end even the pretense of majority rule is the fact that it must produce mounting discontent, which by the irony of the gods turns out to be even more destructive among the coalition in-groups than among the outer groups which are the victims of their plunder. For in the first place the betrayal of the general interest itself undermines economic stability and produces general unease as well as reducing the scope for plunder; and in the second place the appetite for plunder grows with eating.

Hence the coalitions must constantly regroup themselves, enmity among them growing apace, until the strongest among them, probably with a charismatic leader at their head, assume full power. When this happens the majority of the people sigh with relief as chaos yields to apparent order, and the forms of democracy follow the long evaporated principles of democracy into oblivion.

Power Corrupts

We may readily accept this account of degeneration and yet ask why the failure to distinguish between nomos and thesis, and to separate their determination, is the spring and origin of this process. Because, Hayek argues, the powers of government offer seductive gains to those who can capture them. Hence if the same persons determine both the deployment of governmental powers and the rules of

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just conduct, the seductions of the former will in time submerge the constraints of the latter. The most striking example of this process is shown by the very country, Britain, which first in modern times established responsible government and was long its great exemplar.

The Parliament which once forced the Crown to submit to the rule of law, has itself become an engine for lawless government, having assumed the uncontrolled sovereignty which it denied to the Crown, and having abandoned the self-imposed conventional restraints which made it conform to the rule of law for some two centuries after the defeat of the Crown in 1688. The irony for parliamentary democracy is that the sovereignty of Parliament is now only formal, the power to use it having reverted to the Crown's successor, the Cabinet and its party machine, which, behaving like a true plebiscitary dictator, is restrained only by the need to manipulate success in the next plebiscite, which in turn depends mainly on skill in manipulating the competition between various pressure groups.

The analysis indicates the remedy. The determination of nomos and thesis must be separated and entrusted to two different bodies, both of which must be democratically elected, so that neither can claim to be invested with greater democratic sanctity than the other (thus avoiding the process which enabled the British House of Commons to emasculate the House of Lords and effectively destroy its revising powers). However, though the two bodies will have equal democratic authority, their constituencies, modes and periods of election, and qualifications for election, should be different.[5]

The Governmental Structure

Hayek examines the possible modes, periods, and especially qualifications, for election to the true law-making body (*i.e.* that dealing with nomos, which we may call the legislative assembly) in penetrating and illuminating detail. Its members (whom Hayek with his alert eye for classical Athenian parallels, calls the *nomothetae*) would lay down the general rules of just conduct which would govern the deliberations of the thesis-making body (which we may call the governmental assembly) and the exercise of the powers of government. In such a constitution there would be a need for a supreme court not merely for the conventional task of construing the decisions of the two assemblies, but also for adjudication in case of disputes between them.

It is impossible within the short compass of this article to do justice to the depth and amplitude of Hayek's analysis. For example his

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exposition of the proper functions of government, and in particular of the correct approach of authority to problems of competition and monopoly, is a marvel of sure-footedness as he picks his way to a sound conclusion with immense skill through a minefield thickly strewn with lethal errors. The above statement of his argument is therefore a barely adequate attempt at a very compressed account of its most essential elements.

His diagnosis of the process of democratic degeneration surely merits ready acceptance, but with this qualification which has a bearing upon the effectiveness of his remedy. The entrustment of nomos and thesis to the same deliberative body would not have the baleful effect which he rightly describes without the grip on the minds of citizens and legislators of the intellectual errors which he exposes in the first two volumes of his trilogy. Hence his remedy is unlikely to be successful unless at the same time the influence of these errors is removed. But if this influence disappears, it is arguable that his remedy becomes unnecessary.

The Case of the United States

Consider the case of the United States. The same process of democratic degeneration is visible there as elsewhere, though it may not have gone so far as in some other countries. Yet, though it does not appear to be the case at first sight, it is arguable that the United States already has Hayek's system in its essentials, and has had ever since the Supreme Court invested itself with the power of judicial review.

The essence of Hayek's system is twofold. First, a body concerned with the rules of just conduct which is separate from a second body which deliberates upon the administration of government, and which sets the framework of law for the decision of that second body. Secondly, at least equal popular legitimacy for the first body as for the second, so that when the former's rules restrain the latter's itch for action, the people will accept them and approve the restraint.

The two bodies in the American system are the Supreme Court and Congress, which look different from Hayek's system but, it may be argued, are not. In theory the function of the Supreme Court is to apply the provisions of the Constitution. In practice it has tended to apply its concept of what is right and just (*i.e.* has sought to distil out of the Constitution Hayek's rules of just conduct), especially during the past forty years or thereabouts.

The shift from theory to practice presents little difficulty if one proceeds from the assumption that the Constitution is itself essentially a comprehensive statement of what is

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The Fundamental Distinction

The fundamental distinction between a constitution and ordinary laws is similar to that between laws in general and their application by the courts to a particular case: as in deciding concrete cases the judge is bound by general rules, so the legislature in making particular laws is bound by the more general principles of the constitution. The justification for these distinctions is also similar in both cases: as a judicial decision is regarded as just only if it is in conformity with a general law, so particular laws are regarded as just only if they conform to more general principles. And as we want to prevent the judge from infringing the law for some particular reason, so we also want to prevent the legislature from infringing certain general principles for the sake of temporary and immediate aims.

F. A. HAYEK, *The Constitution of Liberty*

right and just. It then calls for no great effort from the judges to find that the Constitution really means whatever they currently believe to be right and just. If they are good lawyers, accustomed to intricate argument, their skill in construction enables them to reach this conclusion. If they are not, they ride off on the principle that the Constitution is a flexible document which is intended to breathe the spirit of the age, and so they reach the same conclusion as their more competent brethren. It is true that there have been and are judges described as strict constructionists but a scrutiny of their judgments will show that they too follow what they believe to be just, though their concept of justice is of an older lineage than that of their less traditionalist brethren.

This process was especially obvious in the decisions of the Warren Court. It is well known that Chief Justice Warren, knowing little law himself and having little skill in legal analysis, would react irritably to counsel who submitted a web of legal argument, saying "Never mind these legal points. The question is, is it right, is it just?" Of course a judge of such a caliber is contemptible, and it is true that when a competent judge deduces what he considers to be right and just from the Constitution, he does it in such a manner that the thread of legal construction handed on by his predecessors is as far as possible unbroken. Neverthe-

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less Warren differed from his predecessors, colleagues and successors only in his naiveté and ignorance. They too have generally sought to find and apply what they have believed to be the rules of just conduct, free from the trammels which bind the lower courts.

The Role of the Courts

In countries where there is no power of judicial review (*e.g.* the United Kingdom), it is common for the highest court in the land to say "We find that the law in the case before us is unjust, but we are bound to apply the law as we find it. It is for the legislature to rectify the injustice by amending the law." In the United States the parallel would be "We find that the provisions of the Constitution in the case before us are unjust, but we are bound to apply them as we find them. It is for Congress and three-quarters of the States to rectify the injustice by amending the Constitution." How often has the Supreme Court said this?

It follows that the Supreme Court at least in some measure attempts to perform the function of Hayek's legislative assembly; and that the fact that Congress attempts to deal with both *nomos* and *thesis* is not a fatal impediment since its acts are subject to judicial review. As for popular respect and allegiance, it is stronger for the Supreme Court than for Congress even though it is not founded on democratic election. Thus when Franklin Roosevelt was at the height of his democratic popularity, having carried 46 out of 48 states in the 1936 election, he was unable to carry the people with him in his assault on the Supreme Court.

Democratic Degeneration by Way of the Supreme Court

The matter can be tested further. Suppose that Hayek's system had existed in the United States in the 1930's. Would the Legislative Assembly have resisted the popular clamor for the acts and policies of the President and Congress which have done so much damage to the American economy and polity? It is hardly likely. After all from 1937 the Supreme Court itself succumbed to the fashionable myths and errors, although it had a greater power to stand aloof from popular emotion than a Legislative Assembly would have had. Indeed those myths and errors have become so ingrained in the thinking of most judges, that the Supreme Court has now become in some ways an even more powerful engine for the degeneration of liberal democracy than the Congress. Could a Legislative Assembly have resisted the *Zeitgeist* better?

Hence I suggest that Hayek's remedy will not work unless his assault on the intellectual errors of our time first succeeds. But is it true

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that if he wins the intellectual battle, his remedy becomes unnecessary? The answer, I believe, is No. First, there are important countries (*e.g.* notably Britain and those which have inherited her system) which will save their liberties only by fundamentally new constitutional arrangements; and Hayek's remedy is at least as good as the only other probable workable alternative, the original prescription of the American Republic (but including judicial review). Secondly, his remedy would consolidate the intellectual victory. Indeed, as intellectual battles are never complete and tend to stretch out over long periods, his new constitutional arrangements would be needed to forestall the effects of the local and occasional reverses which even victorious armies suffer.

—FOOTNOTES—

[1]See my article, "The Wiles of Satan," *Modern Age*, Spring, 1978, p. 168.

[2]The Wincott Lecture, 1973, published by the Institute of Economic Affairs, London. 2nd impression, 1976.

[3]In the interest of brevity I am doing some slight violence to Hayek's distinction between nomos and thesis. The underlying distinction is between found law and made law. Hence some element of thesis enters into the determination of rules of just conduct. But for the purpose of this article's discussion the distinction stated here will serve.

[4]As the degeneration of democracy may lead to disgust with its very name, Hayek suggests that we might have recourse to the other Greek word for rule and call his regenerated system "demarchy."

[5]Of course this should not be confused with the case of the American Senate and House of Representatives because, though they do indeed differ in their constituencies, periods and qualifications for election, and to some degree in their powers, they both deal with nomos *and* thesis.

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With Wings as Eagles

WHEN William Grimes was editor of the *Wall Street Journal,* nothing annoyed him more than references to his age. "If anyone calls me a senior citizen," he said on one occasion, "I'll hit him with my crutch."

Perry Gresham, a septuagenarian who is some years retired as a very active head of Bethany College in West Virginia, is not as vociferous as Bill Grimes about our national penchant for shuffling people into age categories. But, as he makes plain in *With Wings as Eagles,* he resents stereotyping that deprives people of the chance for active lives long before their vital energies have been used up.

The old, he suggests, have become an endangered species in America. "Old daddy gov'mint" has done its best to make "seniority" and "senility" interchangeable words. A third of the nation is supposed, at age 65 or thereabouts, to get out of the work force and start living on that Social Security funny money that could have been real wealth if daddy gov'mint had only allowed people the alternative of making their own investments.

The Congress that passes the laws that discriminate against "senior citizens" is entirely hypocritical. It has no mandatory retirement age for itself. Yet it sets limits on what the 65-year-older can earn and still collect the full Social Security that he has been paying for all those years under the illusion that he was buying insurance.

Inflation, of course, is the bane of the elderly who are compelled by the national stereotype to accept the burden of living on fixed incomes. The villain in inflation is the same

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government that has decreed an arbitrary cutoff for people in the working force.

In California, Old Man Jarvis, himself an exciting and energetic septuagenarian, actually succeeded in doing something about the two jaws of the "vise" (rising prices and increasing taxes) that work such a hardship on those on fixed incomes. The Jarvis crusade against the property tax is a heartening harbinger. Following the California example, the elderly can, as Perry Gresham says, "mobilize for less government instead of more, for fewer taxes instead of more benefits."

Meanwhile Perry Gresham is not waiting on the tax rebellion to do something for people. Like Leonard Read, he believes in exemplarity. He discovered, on a rainy night in St. Louis when he was making notes for a speech on "Life Begins at Seventy," that he had all too negligently accepted a scenario of the human life-cycle that put him on a plateau that must give way to slow decline and death. It suddenly occurred to him that life was a matter of several peaks of achievement, not merely one. Perry Gresham speaks of experiencing something he calls "the surge of the sixties." It was equivalent to the athletes' second wind.

The concept of new surges sent Perry Gresham to the history books. He discovered that six of Plato's greatest dialogues were written in the two decades before his death at 79. Socrates was cut off at age 70 by a rigged court that had condemned him to death for being all too effective as a teacher. Goethe wrote some of his greatest poetry in his seventies. Benjamin Franklin was active in the Constitutional convention in his eighties. To come closer to home, Henry Hazlitt writes as clearly and cogently about economics in his eighties as he did in his fifties.

Life, says Perry Gresham, is duration. The concept was Henri Bergson's, who thought that aging persons, who had greater reservoirs of experience from which to draw,

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Fierce no more is the spectre of old age
I now see life as a series of renewals
Senility is for those who abuse the body
Or fail to qualify for renewal
Despondency is for those who fail
to find new challenges
Loneliness is for those who fail to cultivate new friends
Despair is for those who have lost their nerve
I have faced all these spectres
and I have defeated them
With eagle wings I soar above them
Old age is truly better than youth or middle years
I have earned the right to be wise
And to enjoy the inner splendor which has replaced
The external concerns of the busiest years.

PERRY E. GRESHAM

could contribute much to creative evolution. Pondering Bergson on duration and his own experience with the "surge of the sixties," Perry Gresham decided that men could be betrayed by defective images. Some of the images are mechanical. There is, for instance, the "old-car" theory. An old car can take just so many repairs. Brakes can be relined, even new engines may be substituted, but bodies nevertheless wear out in the allotted time.

Biological images can be just as discouraging. There is the "old-tree" theory. Eventually the sturdiest tree trunk must become a rotting log returning to the earth.

Perry Gresham discovered that if he rejected mechanical and biological images in favor of his "surge" theory, life became a matter of successive renewals. The title of his book comes from the Prophet Isaiah: "But they that wait upon the Lord shall renew their strength; they shall mount up with wings as eagles." The fear of death is a "disease of Europe." It is what comes of faulty images, such as that of the "old car" or the "old tree." But if one is willing to "wait upon the Lord"

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and accept the theory of renewals, one ceases to worry about death.

Much of Perry Gresham's book is a celebration of the scriptural exaltation of faith as the substance of things hoped-for, the evidence of things not seen. But, though he pays tribute to Oriental cultures which have little terror of the prospect of dying, Perry Gresham is like any other incurable Westerner when it comes to self-help in postponing the day when there will be no more earthly surges of energy.

He has good rules for sustaining old friendships and cultivating new ones. He believes in the therapeutic values of games and dieting, but warns against being fanatic and boring about either. He believes in listening as well as in speaking. The vice of self-centeredness must be combatted—it is what makes one morose and dissatisfied even among interesting people. "The cultivating of an other-regarding point of view," says Perry Gresham, "is a lifelong experience, but seventy is a good time to start if it hasn't been started earlier."

We have lived through the years of the baby boom and the tyranny of the young. Now that our population is growing older, Perry Gresham's surge philosophy may find a bigger audience than would have been possible in the Nineteen Sixties. The officially sanctioned retirement age has recently been jumped from 65 to 70. Congress feels more complacent about letting those on Social Security earn more without being penalized for being productive. Who knows, if Perry Gresham can get a good hearing for his eagle-wing point of view, maybe Congress will ditch all those laws that treat the elderly with contempt.

CUTTING BACK CITY HALL
by Robert W. Poole, Jr.
(Universe Books, 381 Park Ave. So., New York, N.Y. 10016)
224 pages ■ $12.50 cloth

Reviewed by Brian Summers

AMERICANS have grown used to thinking that the quality of local services rises and falls with tax rates. Thus, anyone proposing a tax cut is immediately accused of wanting to reduce already inadequate services.

This, Robert Poole shows, need not be the case. Local taxes can be cut while services are maintained—if not vastly improved!

Take the example of mass transit. Any talk of a tax cut is immediately met with threats of fare hikes and reduced schedules. But there is no reason why mass transit should be a city-run monopoly. As Poole shows with actual cases, private buses, jitneys, gypsy cabs, shared-ride cabs, car pools and van pools provide bet-

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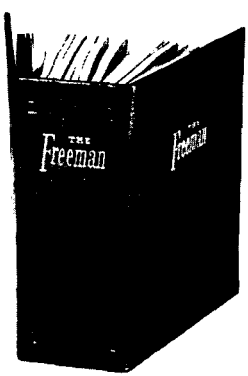
ter, cheaper, and more flexible service than tax-subsidized mass transit systems. All that is needed to turn them loose is a repeal of government regulations.

The same is true for garbage collection. Cut taxes, we are threatened, and garbage will pile up. But Poole cites numerous examples of private firms that put the government-run systems to shame. And at a profit! Private refuse collectors have pioneered in the profitable extraction of energy, usable metals and glass from garbage.

Poole also considers police and fire protection, criminal justice, ambulance service, recreational services, health care, zoning, public works, city management, and schools. In every field he finds examples of private contracting, user fees, and modern management techniques that are improving local services while cutting costs.

Cutting Back City Hall is a valuable handbook for those who seek better local services with reduced taxes. Especially useful is a listing of companies (including consultants) that offer services to local governments on a contractual basis.



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